

Calendar No. 360

106TH CONGRESS }
1st Session }

SENATE

{ REPORT
106-204

NORTHERN MARIANA ISLANDS COVENANT IMPLEMENTATION ACT

NOVEMBER 1, 1999.—Ordered to be printed

Mr. MURKOWSKI, from the Committee on Energy and Natural
Resources, submitted the following

REPORT

[To accompany S. 1052]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 1052) to implement further the Act (Public Law 94-241) approving the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill, as amended, do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE AND PURPOSE.

(a) This Act may be cited as the “Northern Mariana Islands Covenant Implementation Act”.

(b) STATEMENT OF PURPOSE. In recognition of the need to ensure uniform adherence to long-standing fundamental immigration policies of the United States, it is the intention of Congress in enacting this legislation:

(1) to ensure effective immigration control by extending the Immigration and Nationality Act, as amended (8 U.S.C. 1101 et seq.), in full to the Commonwealth of the Northern Mariana Islands, with special provisions to allow for the orderly phasing-out of the non-resident contract worker program of the Commonwealth of the Northern Mariana Islands, and the orderly phasing-in of Federal responsibilities over immigration in the Commonwealth of the Northern Mariana Islands;

(2) to minimize, to the greatest extent possible, potential adverse effects this orderly phase-out might have on the economy of the Commonwealth of the Northern Mariana Islands by:

(A) encouraging diversification and growth of the economy of the Commonwealth of the Northern Mariana Islands consistent with fundamental values underlying Federal immigration policy;

(B) recognizing local self-government, as provided for in the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America through consultation with the Governor and other elected officials of the government of the Commonwealth of the Northern Mariana Islands by federal agencies and by considering the views and recommendations of such officials in the implementation and enforcement of federal law by federal agencies;

(C) assisting the Commonwealth of the Northern Mariana Islands to achieve a progressively higher standard of living for its citizens through the provision of technical and other assistance;

(D) providing opportunities for persons authorized to work in the United States, including lawfully admissible freely associated state citizen labor; and

(E) ensuring the ability of the locally elected officials of the Commonwealth of the Northern Mariana Islands to make fundamental policy decisions regarding the direction and pace of the economic development and growth of the Commonwealth of the Northern Mariana Islands, consistent with the fundamental national values underlying Federal immigration policy.

SEC. 2. IMMIGRATION REFORM FOR THE COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS.

(a) AMENDMENTS TO ACT APPROVING THE COVENANT TO ESTABLISH A COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS IN POLITICAL UNION WITH THE UNITED STATES OF AMERICA.—Public Law 94–241 (90 Stat. 263), as amended, is further amended by adding at the end thereof the following:

“SEC. 6. IMMIGRATION AND TRANSITION.

“(a) APPLICATION OF THE IMMIGRATION AND NATIONALITY ACT AND ESTABLISHMENT OF A TRANSITION PROGRAM.—Effective on the first day of the first full month commencing one year after the date of enactment of the Northern Mariana Islands Covenant Implementation Act (hereafter the “transition program effective date”), the provisions of the Immigration and Nationality Act, as amended (8 U.S.C. 1101 et seq.) shall apply to the Commonwealth of the Northern Mariana Islands: *Provided*, That there shall be a transition period ending December 31, 2009 (except for subsection (d)(2)(I)) following the transition program effective date, during which the Attorney General of the United States (hereafter “Attorney General”), in consultation with the United States Secretaries of State, Labor, and the Interior, shall establish, administer, and enforce a transition program for immigration to the Commonwealth of the Northern Mariana Islands provided in subsections (b), (c), (d), (e), (f), (g) and (j) of this section (hereafter the “transition program”). The transition program shall be implemented pursuant to regulations to be promulgated as appropriate by each agency having responsibilities under the transition program.

“(b) EXEMPTION FROM NUMERICAL LIMITATIONS FOR H–2B TEMPORARY WORKERS.—An alien, if otherwise qualified, may seek admission to the Commonwealth of the Northern Mariana Islands as a temporary worker under section 101(a)(15)(H)(ii)(B) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)(ii)(B)) without regard to the numerical limitations set forth in section 214(g) of such Act (8 U.S.C. 1184(g)).

“(c) TEMPORARY ALIEN WORKERS.—The transition program shall conform to the following requirements with respect to temporary alien workers who would otherwise not be eligible for nonimmigrant classification under the Immigration and Nationality Act:

“(1) Aliens admitted under this subsection shall be treated as nonimmigrants under section 101(a)(15) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)), including the ability to apply, if otherwise eligible, for a change of nonimmigrant classification under section 248 of such Act (8 U.S.C. 1258), or adjustment of status, if eligible therefor, under this section and section 245 of such Act (8 U.S.C. 1255).

“(2)(A) The United States Secretary of Labor shall establish, administer, and enforce a system for allocating and determining the number, terms, and conditions of permits to be issued to prospective employers for each temporary alien worker who would not otherwise be eligible for admission under the Immigration and Nationality Act. This system shall provide for a reduction in the allocation of permits for such workers on an annual basis, to zero, over a period not to extend beyond December 31, 2009 and shall take into account the number of petitions granted under subsection (j). In no event shall a permit be valid beyond the expiration of the transition period. This system may be based on any reasonable method and criteria determined by the United States Secretary of

Labor to promote the maximum use of, and to prevent adverse effects on wages and working conditions of, persons authorized to work in the United States, including lawfully admissible freely associated state citizen labor, taking into consideration the objective of providing as smooth a transition as possible to the full application of federal laws.

“(B) The United States Secretary of Labor is authorized to establish and collect appropriate user fees for the purpose of this section. Amounts collected pursuant to this section shall be deposited in a special fund to the Treasury. Such amounts shall be available, to the extent and in the amounts as provided in advance in appropriations acts, for the purposes of administering this section. Such amounts are authorized to be appropriated to remain available until expended.

“(3) The Attorney General shall set the conditions for admission of non-immigrant temporary alien workers under the transition program, and the United States Secretary of State shall authorize the issuance of nonimmigrant visas for aliens to engage in employment only as authorized in this subsection: *Provided*, That such visas shall not be valid for admission to the United States, as defined in section 101(a)(38) of the Immigration and Nationality Act (8 U.S.C. 1101 (a)(38)), except the Commonwealth of the Northern Mariana Islands. An alien admitted to the Commonwealth of the Northern Mariana Islands on the basis of such a nonimmigrant visa shall be permitted to engage in employment only as authorized pursuant to the transition program. No alien shall be granted nonimmigrant classification or a visa under this subsection unless the permit requirements established under paragraph (2) have been met.

“(4) An alien admitted as a nonimmigrant pursuant to this subsection shall be permitted to transfer between employers in the Commonwealth of the Northern Mariana Islands during the period of such alien’s authorized stay therein, without advance permission of the employee’s current or prior employer, to the extent that such transfer is authorized by the Attorney General in accordance with criteria established by the Attorney General and the United States Secretary of Labor.

“(d) IMMIGRANTS.—With the exception of immediate relatives (as defined in section 201(b)(2) of the Immigration and Nationality Act (8 U.S.C. 1151(b)(2))) and persons granted an immigrant visa as provided in paragraphs (1) and (2) of this subsection, no alien shall be granted initial admission as a lawful permanent resident of the United States at a port-of-entry in the Commonwealth of the Northern Mariana Islands.

“(1) FAMILY-SPONSORED IMMIGRANT VISAS.—For any fiscal year during which the transition program will be in effect, the Attorney General, after consultation with the governor and the leadership of the Legislature of the Commonwealth of the Northern Mariana Islands, and in consultation with appropriate federal agencies, may establish a specific number of additional initial admissions as a family-sponsored immigrant at a port-of-entry in the Commonwealth of the Northern Mariana Islands, or at a port-of-entry in Guam for the purpose of immigrating to the Commonwealth of the Northern Mariana Islands, pursuant to sections 202 and 203(a) of the Immigration and Nationality Act (8 U.S.C. 1152 and 1153(a)).

“(2) EMPLOYMENT-BASED IMMIGRANT VISAS.—

“(A) If the Attorney General, after consultation with the United States Secretary of Labor and the governor and the leadership of the Legislature of the Commonwealth of the Northern Mariana Islands, finds that exceptional circumstances exist with respect to the inability of employers in the Commonwealth of the Northern Mariana Islands to obtain sufficient work-authorized labor, the Attorney General may establish a specific number of employment-based immigrant visas to be made available during the following fiscal year under section 203(b) of the Immigration and Nationality Act, (8 U.S.C. 1153(b)). The labor certification requirements of sections 212(a)(5) of the Immigration and Nationality Act, as amended (8 U.S.C. 1182(a)(5)) shall not apply to an alien seeking immigration benefits under this subsection.

“(B) Upon notification by the Attorney General that a number has been established pursuant to subparagraph (A), the United States Secretary of State may allocate up to that number of visas without regard to the numerical limitations set forth in sections 202 and 203(b)(3)(B) of the Immigration and Nationality Act (8 U.S.C. 1152 and 1153(b)(3)(B)). Visa numbers allocated under this subparagraph shall be allocated first from the number of visas available under section 203(b)(3) of such Act (8 U.S.C. 1153(b)(3)) or,

if such visa numbers are not available, from the number of visas available under section 203(b)(5) of such Act (8 U.S.C. 1153(b)(5)).

“(C) Persons granted employment-based immigrant visas under the transition program may be admitted initially at a port-of-entry in the Commonwealth of the Northern Mariana Islands, or at a port of entry in Guam for the purpose of immigrating to the Commonwealth of the Northern Mariana Islands, as lawfully permanent residents of the United States. Persons who would otherwise be eligible for lawful permanent residence under the transition program, and who would otherwise be eligible for an adjustment of status, may have their status adjusted within the Commonwealth of the Northern Mariana Islands to that of an alien lawfully admitted for permanent residence.

“(D) Any immigrant visa issued pursuant to this paragraph shall be valid only for application for initial admission to the Commonwealth of the Northern Mariana Islands. The admission of an alien pursuant to such an immigrant visa shall be an admission for lawful permanent residence and employment only in the Commonwealth of the Northern Mariana Islands during the first five years after such admission. Such admission shall not authorize residence or employment in any other part of the United States during such five-year period. An alien admitted for permanent residence pursuant to this paragraph shall be issued appropriate documentation identifying the person as having been admitted pursuant to the terms and conditions of this transition program, and shall be required to comply with a system for the registration and reporting of aliens admitted for permanent residence under the transition program, to be established by the Attorney General, by regulation, consistent with the Attorney General’s authority under chapter 7 of Title II of the Immigration and Nationality Act (8 U.S.C. 1301–1306).

“(E) Nothing in this paragraph shall preclude an alien who has obtained lawful permanent resident status pursuant to this paragraph from applying, if otherwise eligible, under this section and under the Immigration and Nationality Act for an immigrant visa or admission as a lawful permanent resident under the Immigration and Nationality Act.

“(F) Any alien admitted under this subsection, who violates the provisions of this paragraph, or who is found removable or inadmissible under the section 237(a) 8 U.S.C. 1227(a), or paragraphs (1), (2), (3), (4)(A), (4)(B), (6), (7), (8), (9) or (10) of section 212(a) (8 U.S.C. 1182(a)), shall be removed from the United States pursuant to sections 235, 238, 239, 240, or 241 of the Immigration and Nationality Act, as appropriate (8 U.S.C. 1225, 1228, 1229, 1230, and 1231).

“(G) The Attorney General may establish by regulation a procedure by which an alien who has obtained lawful permanent resident status pursuant to this paragraph may apply for a waiver of the limiting terms and conditions of such status. The Attorney General may grant the application for waiver, in the discretion of the Attorney General, if—

“(i) the alien is not in removal proceedings;

“(ii) the alien has been a person of good moral character for the preceding five years;

“(iii) the alien has not violated the terms and conditions of the alien’s permanent resident status; and

“(iv) the alien would suffer exceptional and extremely unusual hardship were such limiting terms and conditions not waived.

“(H) The limiting terms and conditions of an alien’s permanent residence set forth in this paragraph shall expire at the end of five years after the alien’s admission to the Commonwealth of the Northern Mariana Islands as a permanent resident. Following the expiration of such limiting terms and conditions, the permanent resident alien may engage in any lawful activity, including employment, anywhere in the United States. Such an alien, if otherwise eligible for naturalization, may count the five-year period in the Commonwealth of the Northern Mariana Islands toward time in the United States for purposes of meeting the residence requirement of Title III of the Immigration and Nationality Act.

“(I) SPECIAL PROVISION TO ENSURE ADEQUATE EMPLOYMENT IN THE TOURISM INDUSTRY AFTER THE TRANSITION PERIOD ENDS.—

“(i) During 2008, and in 2014 if a five year extension was granted, the Attorney General and the United States Secretary of Labor shall consult with the Governor of the Commonwealth of the Northern Mariana Islands and tourism business in the Commonwealth of the North-

ern Mariana Islands to ascertain the current and future labor needs of the tourism industry in the Commonwealth of the Northern Mariana Islands, and to determine whether a five-year extension of the provisions of this paragraph (d)(2) would be necessary to ensure an adequate number of workers for legitimate businesses in the tourism industry. For the purpose of this section, a business shall not be considered legitimate if it engages directly or indirectly in prostitution or any activity that is illegal under federal or local law. The determination of whether a business is legitimate and whether it is sufficiently related to the tourism industry shall be made by the Attorney General in his sole discretion and shall not be reviewable. If the Attorney General after consultation with the United States Secretary of Labor determines, in the Attorney General's sole and unreviewable discretion, that such an extension is necessary to ensure an adequate number of workers for legitimate businesses in the tourism industry, the Attorney General shall provide notice by publication in the Federal Register that the provisions of this paragraph will be extended for a five-year period with respect to the tourism industry only. The Attorney General may authorize one further extension of this paragraph with respect to the tourism industry in the Commonwealth of the Northern Mariana Islands if, after the Attorney General consults with the United States Secretary of Labor and the Governor of the Commonwealth of the Northern Mariana Islands, and local tourism businesses, the Attorney General determines, in the Attorney General's sole discretion, that a further extension is required to ensure an adequate number of workers for legitimate businesses in the tourism industry in the Commonwealth of the Northern Mariana Islands. The determination as to whether a further extension is required shall not be reviewable.

“(ii) The Attorney General, after consultation with the Governor of the Commonwealth of the Northern Mariana Islands and the United States Secretary of Labor and the United States Secretary of Commerce, may extend the provisions of this paragraph (d)(2) to legitimate businesses in industries outside the tourism industry for a single five year period if the Attorney General, in the Attorney General's sole discretion, concludes that such extension is necessary to ensure an adequate number of workers in that industry and that the industry is important to growth or diversification of the local economy. The decision by the Attorney General shall not be reviewable.

“(iii) In making his determination for the tourism industry or for industries outside the tourism industry, the Attorney General shall take into consideration the extent to which a training and recruitment program has been implemented to hire persons authorized to work in the United States, including lawfully admissible freely associated state citizen labor to work in such industry. The determination by the Attorney General shall not be reviewable. No additional extension beyond the initial five year period may be granted for any industry outside the tourism industry or for the tourism industry beyond a second extension. If an extension is granted, the Attorney General shall submit a report to the Committee on Energy and Natural Resources of the Senate and the Committee on Resources of the House of Representatives setting forth the reasons for the extension and whether he believes authority for additional extensions should be enacted.

“(e) NONIMMIGRANT INVESTOR VISAS.—

“(1) Notwithstanding the treaty requirements in section 101(a)(15)(E) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(E)), the Attorney General may, upon the application of the alien, classify an alien as a nonimmigrant under section 101(a)(15)(E)(ii) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(E)(ii)) if the alien—

“(A) has been admitted to the Commonwealth of the Northern Mariana Islands in long-term investor status under the immigration laws of the Commonwealth of the Northern Mariana Islands before the transition program effective date;

“(B) has continuously maintained residence in the Commonwealth of the Northern Mariana Islands under long-term investor status;

“(C) is otherwise admissible; and

“(D) maintains the investment or investments that formed the basis for such long-term investor status.

“(2) Within 180 days after the transition program effective date, the Attorney General and the United States Secretary of State shall jointly publish regulations in the Federal Register to implement this subsection.

“(3) The Attorney General shall treat an alien who meets the requirements of paragraph (1) as a nonimmigrant under section (101(a)(15)(E)(ii)) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(E)(ii)) until the regulations implementing this subsection are published.

“(f) PERSONS LAWFULLY ADMITTED UNDER THE COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS IMMIGRATION LAW.—

“(1) No alien who is lawfully present in the Commonwealth of the Northern Mariana Islands pursuant to the immigration laws of the Commonwealth of the Northern Mariana Islands on the transition program effective date shall be removed from the United States on the ground that such alien’s presence in the Commonwealth of the Northern Mariana Islands is in violation of subparagraph 212(a)(6)(A) of the Immigration and Nationality Act, as amended, until completion of the period of the alien’s admission under the immigration laws of the Commonwealth of the Northern Mariana Islands, or the second anniversary of the transition program effective date, whichever comes first. Nothing in this subsection shall be construed to prevent or limit the removal under subparagraph 212(a)(6)(A) of such an alien at any time, if the alien entered the Commonwealth of the Northern Mariana Islands after the date of enactment of the Northern Mariana Islands Covenant Implementation Act, and the Attorney General has determined that the Government of the Commonwealth of the Northern Mariana Islands violated subsection (f) of such Act.

“(2) Any alien who is lawfully present and authorized to be employed in the Commonwealth of the Northern Mariana Islands pursuant to the immigration laws of the Commonwealth of the Northern Mariana Islands on the transition program effective date shall be considered authorized by the Attorney General to be employed in the Commonwealth of the Northern Mariana Islands until the expiration of the alien’s employment authorization under the immigration laws of the Commonwealth of the Northern Mariana Islands, or the second anniversary of the transition program effective date, whichever comes first.

“(g) TRAVEL RESTRICTIONS FOR CERTAIN APPLICANTS FOR ASYLUM.—Any alien admitted to the Commonwealth of the Northern Mariana Islands pursuant to the immigration laws of the Commonwealth of the Northern Mariana Islands or pursuant to subsections (c) or (d) of this section who files an application seeking asylum or withholding of removal in the United States shall be required to remain in the Commonwealth of the Northern Mariana Islands during the period of time the application is being adjudicated or during any appeals filed subsequent to such adjudication. An applicant for asylum or withholding of removal who, during the time his application is being adjudicated or during any appeals filed subsequent to such adjudication, leaves the Commonwealth of the Northern Mariana Islands of his own will without prior authorization by the Attorney General thereby abandons the application, unless the Attorney General, in the exercise of the Attorney General’s sole discretion determines that the unauthorized departure was for emergency reasons and prior authorization was not practicable.

“(h) EFFECT ON OTHER LAWS.—The provisions of this section and the Immigration and Nationality Act, as amended by the Northern Mariana Islands Covenant Implementation Act, shall, on the transition program effective date, supersede and replace all laws, provisions, or programs of the Commonwealth of the Northern Mariana Islands relating to the admission of aliens and the removal of aliens from the Commonwealth of the Northern Mariana Islands.

“(i) ACCRUAL OF TIME FOR PURPOSES OF SECTION 212(A)(9)(B) OF THE IMMIGRATION AND NATIONALITY ACT, AS AMENDED.—No time that an alien is present in violation of the immigration laws of the Commonwealth of the Northern Mariana Islands shall by reason of such violation be counted for purposes of the ground of inadmissibility in section 212(a)(9)(B) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(9)(B)).

“(j) ONE-TIME GRANDFATHER PROVISION FOR CERTAIN LONG-TERM EMPLOYEES.—

“(1) An alien may be granted an immigrant visa, or have his or her status adjusted in the Commonwealth of the Northern Mariana Islands to that of an alien lawfully admitted for permanent residence, without regard to the numerical limitations set forth in sections 202 and 203(b) of the Immigration and Nationality Act, as amended, (8 U.S.C. 1152, 1153(b)) and subject to the limiting terms and conditions of an alien’s permanent residence set forth in paragraphs (C) through (H) of subsection (d)(2), if:

“(A) the alien is employed directly by an employer in a business that the Attorney General has determined is legitimate;

“(B) the employer has filed a petition for classification of the alien as an employment-based immigrant with the Attorney General pursuant to section 204 of the Immigration and Nationality Act, as amended, not later than 180 days following the transition program effective date;

“(C) the alien has been lawfully present in the Commonwealth of the Northern Mariana Islands and authorized to be employed in the Commonwealth of the Northern Mariana Islands for the five-year period immediately preceding the filing of the petition;

“(D) the alien has been employed continuously in that business by the petitioning employer for the 5-year period immediately preceding the filing of the petition;

“(E) the alien continues to be employed in that business by the petitioning employer at the time the immigrant visa is granted or the alien’s status is adjusted to permanent resident;

“(G) the petitioner’s business has a reasonable expectation of generating sufficient revenue to continue to employ the alien in that business for the succeeding five years, and

“(H) the alien is otherwise eligible for admission to the United States under the provisions of the Immigration and Nationality Act, as amended (8 U.S.C. 1101, et seq.).

“(2) Visa numbers allocated under this subsection shall be allocated first from the number of visas available under paragraph 203(b)(3) of the Immigration and Nationality Act, as amended (8 U.S.C. 1153(b)(3)), or, if such visa numbers are not available, from the number of visas available under paragraph 203(b)(5) of such Act (8 U.S.C. 1153(b)(5)).

“(3) The labor certification requirements of section 212(a)(5) of the Immigration and Nationality Act, as amended (8 U.S.C. 1182(a)(5)) shall not apply to an alien seeking immigration benefits under this subsection.

“(4) The fact that an alien is the beneficiary of an application for a preference status that was filed with the Attorney General under section 204 of the Immigration and Nationality Act, as amended (8 U.S.C. 1154) for the purpose of obtaining benefits under this subsection, or has otherwise sought permanent residence pursuant to this subsection, shall not render the alien ineligible to obtain or maintain the status of a nonimmigrant under this Act or the Immigration and Nationality Act, as amended, if the alien is otherwise eligible for such non-immigrant status.”.

(b) CONFORMING AMENDMENTS.—(1) Section 101(a) of the Immigration and Nationality Act (8 U.S.C. 1101(a)) is amended:

(A) in paragraph (36), by deleting “and the Virgin Islands of the United States.” and substituting “the Virgin Islands of the United States, and the Commonwealth of the Northern Mariana Islands.”; and

(B) in paragraph (38), by deleting “and the Virgin Islands of the United States” and substituting “the Virgin Islands of the United States, and the Commonwealth of the Northern Mariana Islands.”.

(2) Section 212(1) of the Immigration and Nationality Act (8 U.S.C. 1182(1)) is amended—

(A) in paragraph (1)—

(i) by striking “stay on Guam”, and inserting “stay on Guam or the Commonwealth of the Northern Mariana Islands”;

(ii) by inserting “a total of” after “exceed”, and,

(iii) by striking the words “after consultation with the Governor of Guam,” and inserting “after respective consultation with the Governor of Guam or the Governor of the Commonwealth of the Northern Mariana Islands.”;

(B) in paragraph (1)(A), by striking “on Guam”, and inserting “on Guam or the Commonwealth of the Northern Mariana Islands, respectively.”;

(C) in paragraph (2)(A), by striking “into Guam”, and inserting “into Guam or the Commonwealth of the Northern Mariana Islands, respectively.”;

(D) in paragraph (3), by striking “Government of Guam” and inserting “Government of Guam or the Government of the Commonwealth of the Northern Mariana Islands”.

(3) The amendments to the Immigration and Nationality Act made by this subsection shall take effect on the first day of the first full month commencing one year after the date of enactment of the Northern Mariana Islands Covenant Implementation Act.

(c) TECHNICAL ASSISTANCE PROGRAM.—The United States Secretaries of Interior and Labor, in consultation with the Governor of the Commonwealth of the Northern Mariana Islands, shall develop a program of technical assistance, including recruit-

ment and training, to aid employers in the Commonwealth of the Northern Mariana Islands in securing employees from among United States authorized labor, including lawfully admissible freely associated state citizen labor. In addition, for the first five fiscal years following the fiscal years when this section is enacted, \$500,000 shall be made available from funds appropriated to the Secretary of the Interior pursuant to Public Law 104-134 for the Federal-CNMI Immigration, Labor and Law Enforcement Initiative for the following activities:

(1) \$200,000 shall be available to reimburse the United States Secretary of Commerce for providing additional technical assistance and other support to the Commonwealth of the Northern Mariana Islands to identify opportunities for and encourage diversification and growth of the Commonwealth economy. The United States Secretary of Commerce shall consult with the Government of the Commonwealth of the Northern Mariana Islands, local businesses, the United States Secretary of the Interior, regional banks, and other experts in the local economy and shall assist in the development and implementation of a process to identify opportunities for and encourage diversification and growth of the Commonwealth economy. All expenditures, other than for the costs of federal personnel, shall require a non-federal matching contribution of 50 percent and the United States Secretary of Commerce shall provide a report on activities to the Committee on Energy and Natural Resources and the Committee on Appropriations of the Senate and the Committee on Resources and the Committee on Appropriations of the House of Representatives by March 1 of each year. The United States Secretary of Commerce may supplement the funds provided under this section with other funds and resources available to him and shall undertake such other activities, pursuant to existing authorities of the Department, as he decides will encourage diversification and growth of the Commonwealth economy. If the United States Secretary of Commerce concludes that additional workers may be needed to achieve diversification and growth of the Commonwealth economy, the Secretary shall promptly notify the Attorney General and the United States Secretary of Labor and shall also notify the Committee on Energy and Natural Resources of the Senate and the Committee on Resources of the House of Representatives of his conclusion with an explanation of how many workers may be needed, over what period of time such workers will be needed, and what efforts are being undertaken to train and actively recruit and hire persons authorized to work in the United States, including lawfully admissible freely associated state citizen labor to work in such businesses.

(2) \$300,000 shall be available to reimburse the United States Secretary of Labor for providing additional technical and other support to the Northern Mariana Islands to train and actively recruit and hire persons authorized to work in the United States, including lawfully admissible freely associated state citizen labor, to fill employment vacancies in the Northern Mariana Islands. The United States Secretary of Labor shall consult with the Governor of the Northern Mariana Islands, local businesses, the College of the Northern Marianas, the United States Secretary of the Interior and the United States Secretary of Commerce and shall assist in the development and implementation of such a training program. All expenditures, other than for the costs of federal personnel, shall require a non-federal matching contribution of 50 percent and the United States Secretary of Labor shall provide a report on activities to the Committee on Energy and Natural Resources and the Committee on Appropriations of the Senate and the Committee on Resources and the Committee on Appropriations of the House of Representatives by March 1 of each year. The United States Secretary of Labor may supplement the funds provided under this section with other funds and resources available to him and shall undertake such other activities, pursuant to existing authorities of the Department, as he decides will assist in such a training program in the Northern Mariana Islands.

(d) DEPARTMENT OF JUSTICE AND DEPARTMENT OF LABOR OPERATIONS.—The Attorney General and the United States Secretary of Labor are authorized to establish and maintain Immigration and Naturalization Service, Executive Office for Immigration Review, and United States Department of Labor operations in the Northern Mariana Islands for the purpose of performing their responsibilities under the Immigration and Nationality Act, as amended, and under the transition program. To the extent practicable consistent with the satisfactory performance of their assigned responsibilities under applicable law, the United States Departments of Justice and Labor shall recruit and hire from among qualified applicant resident in the Northern Mariana Islands for staffing such operations.

(e) REPORT TO THE CONGRESS.—The President shall report to the Senate Committee on Energy and Natural Resources, and the House Committee on Resources, within six months after the fifth anniversary of the enactment of this Act, evalu-

ating the overall effect of the transition program and the Immigration and Nationality Act on the Northern Mariana Islands, and at other times as the President deems appropriate. The report shall describe what efforts have been undertaken to diversify and strengthen the local economy, including, but not limited to, efforts to promote the Commonwealth of the Northern Mariana Islands as a tourist destination.

(f) LIMITATION ON NUMBER OF ALIEN WORKERS PRIOR TO APPLICATION OF THE IMMIGRATION AND NATIONALITY ACT, AS AMENDED, AND ESTABLISHMENT OF THE TRANSITION PROGRAM.—During the period between enactment of this Act and the effective date of the transition program established under section 6 of Public Law 94–241, as amended by this Act, the Government of the Commonwealth of the Northern Mariana Islands shall not permit an increase in the total number of alien workers who are present in the Northern Mariana Islands on the date of enactment of this Act.

(g) APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out the purposes of this section and of the Immigration and Nationality Act with respect to the Commonwealth of the Northern Mariana Islands.

PURPOSE OF THE MEASURE

S. 1052, as introduced, amends the legislation approving the Covenant for the Commonwealth of the Northern Mariana Islands (CNMI) to extend Federal immigration laws to the CNMI if the Attorney General finds either that the CNMI does not have the institutional capability to administer an effective system of immigration control or has not demonstrated a genuine commitment to enforce such a system. The legislation includes a transition period of not more than ten years with provisions during that period for issuance of nonimmigrant temporary alien worker visas and imposition of user fees and permits those aliens previously admitted under the temporary worker program of the CNMI to remain for the remainder of their contract or two years, whichever is less. The legislation contains specific provisions to ensure access to workers in construction and the hotel industries. The legislation also prohibits the CNMI from increasing the number of temporary alien workers between the date of enactment and the date on which the Attorney General makes the required findings.

The Committee amendment: (1) extends Federal immigration law to the Marianas; (2) provides a transition period ending December 31, 2009; (3) permits the Attorney General to extend the transition period for legitimate businesses in the tourist industry for not more than two successive five year period for legitimate businesses in other industries; (4) provides a one-time grandfather for individuals who have worked in legitimate businesses for the past five years; and (5) requires the Secretary of Commerce to provide technical and financial assistance to encourage growth and diversification of the local economy and the Secretary of Labor to provide technical and financial assistance to recruit, train, and hire local residents and residents of the freely associated states (persons authorized to work in the United States).

BACKGROUND AND NEED

SUMMARY AND NEED

The issue of when and how to extend Federal immigration laws to the Commonwealth of the Northern Mariana Islands has been before the Committee since 1973, when the Committee was con-

sulted on the issue during the negotiations that led to the Covenant. The Covenant provided that Federal immigration laws would not apply until after the Trusteeship terminated and formal U.S. sovereignty was extended over the area. Immigration and naturalization are an essential aspect of U.S. sovereignty and immediate extension of those laws upon approval of the Covenant would have been inconsistent with the legal status of the Marianas, which would remain a part of the United Nations Trust Territory of the Pacific Islands until termination of the Trusteeship.

In addition, there were concerns over how Federal immigration laws would operate and whether changes to Federal immigration laws might be needed to protect the islands from being overrun and to ensure adequate access to workers. At the time, a study on immigration was underway, and the Committee noted in its report its expectation that "[i]t may well be that these problems will have been solved by the time of the termination of the Trusteeship Agreement and that the Immigration and Nationality Act containing adequate protective provisions can then be introduced to the Northern Marianas Islands." (S. Rept. 94-433, p. 78) At the time of termination of the Trusteeship for the Commonwealth in 1986, however, Congress did not take action to extend Federal immigration laws. A result of that inaction was the development of an economy based in large part on imported labor using short-term contracts. Over the years increasing reports of worker abuse and other problems led Congress in 1994 to earmark funds for enhanced Federal agency presence, specifically from the Departments of Justice, Labor, and Treasury, in the Commonwealth.

While there has been a genuine commitment by the present governor to deal with worker abuse problems of the past and the problems associated with the limited local resources and capabilities in running a full scale immigration system, the economy of the Commonwealth remains dominated by an alien workforce who can not participate in the community while unemployment among U.S. citizen residents remains about 15 percent. Furthermore, the record demonstrates that even with good faith and an honest commitment, there are substantive and procedural problems that the local government simply cannot handle. For example, procedurally, the Commonwealth cannot replicate the resources of the Federal Government in issuing visas, screening individuals, and applying a double-check on persons seeking to enter the United States to prevent the entry of criminals or others who should be excluded, such as persons with communicable diseases. The Commonwealth also has problems tracking individuals. The recent amnesty program produced about 3,000 persons who were on the island illegally.

On a substantive basis, aspects of the Commonwealth immigration system are also simply inconsistent with federal policy. Among those is the policy that persons admitted into the United States to fill permanent jobs do so as immigrants with the ability to become U.S. citizens. Also, the Commonwealth cannot enforce federal requirements under international agreements, such as the treatment of persons seeking amnesty. As a general matter, federal laws should apply and be enforced in the territories as in the rest of the United States with such changes and modifications as are justified to take into account the individual situation of each of the terri-

tories. That was the Committee expectation when it first considered the Covenant, as stated in its report to accompany the Joint Resolution, approving the Covenant. The Commonwealth is not a foreign country and should not be treated as such. Federal immigration laws should apply to the Commonwealth but should be extended in an orderly manner with a commitment by Federal agencies to mitigate any potential adverse effects and encourage diversification and growth of the local economy.

BACKGROUND

The Commonwealth of the Northern Marianas Islands is a three hundred mile archipelago consisting of fourteen islands stretching north of Guam. The largest inhabited islands are Saipan, Rota, and Tinian. Magellan landed at Saipan in 1521 and the area was controlled by Spain until the end of the Spanish-American War. Guam, the southernmost of the Marianas, was ceded to the United States following the Spanish-American War and the balance sold to Germany together with the remainder of Germany's possessions in the Caroline and Marshall Islands.

Japan seized the area during World War I and became the mandatory power under a League of Nations Mandate for Germany's possessions north of the equator on December 17, 1920. By the 1930's Japan had developed major portions of the area and began to fortify the islands. Guam was invaded by Japanese forces from Saipan in 1941. The Marianas were secured after heavy fighting in 1994 and the bases on Tinian were used for the invasion of Okinawa and for raids on Japan, including the nuclear missions on Hiroshima and Nagasaki. In 1947, the Mandated islands were placed under the United Nations trusteeship system as the Trust Territory of the Pacific Islands (TTPI) and the United States was appointed as the Administering Authority. The area was divided into six administrative districts with the headquarters located in Hawaii and then in Guam. The TTPI was the only "strategic" trusteeship with review by the Security Council rather than the General Assembly of the United Nations. The Navy administered the Trusteeship, together with Guam, until 1951, when administrative jurisdiction was transferred to the Department of the Interior. The Northern Marianas, however, were returned to Navy jurisdiction from 1952-1962. In 1963, administrative headquarters were moved to Saipan.

With the establishment of the Congress of Micronesia in 1965, efforts to reach an agreement on the future political status of the area began. Attempts to maintain a political unity within the TTPI were unsuccessful, and each of the administrative district (Kosrae eventually separated from Pohnpei District in the Carolines) sought to retain its separate identity. Four of the districts became the Federated States of Micronesia, the Marshalls became the Republic of the Marshall Islands, and Palau became the Republic of Palau, all sovereign countries in free association with the United States under Compacts of Free Association. The Marianas had sought reunification with Guam and United States territorial status from the beginning of the Trusteeship. Separate negotiations with the Marianas began in December 1972 and concluded in 1975.

In 1976, Congress approved a Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States (PL 94-241). The Covenant had been approved in a United Nations observed plebiscite in the Northern Mariana Islands and formed the basis for the termination of the United Nations Trusteeship with respect to the Northern Mariana Islands. Termination occurred in 1986 for the CNMI and for the Republic of the Marshall Islands and the Federated States of Micronesia. Prior to termination, those provisions of the Covenant that Authority. Other provisions (such as the extension of U.S. sovereignty) were not made applicable. Section 503 of the covenant provides in pertinent part that:

The following laws of the United States, presently inapplicable to the Trust Territory of the Pacific Islands, will not apply to the Northern Mariana Islands except in the manner and to the extent made applicable to them by the Congress by law after termination of the Trusteeship Agreement:

(a) except as otherwise provided in Section 506 [which dealt with certain children born abroad and immediate relatives], the immigration and naturalization laws of the United States; * * *

(c) the minimum wage provisions of Section 6, Act of June 25, 1938, 52 Stat. 1062, as amended.

The Covenant permitted a unique system in the CNMI under which the local government controlled immigration and minimum wage levels until Congress decided to extend federal legislation and also had the benefit of duty and quota free entry of manufactured goods under the provisions of General Note 3(a) of the Harmonized Tariff Schedules. Although certain provisions of the Covenant, such as the provisions on citizenship, are explicitly made subject to mutual consent, these provisions can be modified or repealed by the Congress. The Section by Section analysis of the Committee Report on the Covenant provides in part:

Section 503.—This section deals with certain laws of the United States which are not now applicable to the Northern Mariana Islands and provides that they will remain inapplicable except in the manner and to the extent that they are made applicable by specific legislation enacted after the termination of the Trusteeship. These laws are:

The Immigration and Naturalization Laws (subsection (a)). The reason this provision is included is to cope with the problems which unrestricted immigration may impose upon small island communities. Congress is aware of those problems. * * * It may well be that these problems will have been solved by the time of the termination of the Trusteeship Agreement and that the Immigration and Nationality Act containing adequate protective provisions can then be introduced to the Northern Mariana Islands. * * *

The same consideration applies to the introduction of the Minimum Wage Laws. (Subsection (c)). Congress realizes that the special conditions prevailing in the various territories require different treatment. * * * In these cir-

cumstances, it would be inappropriate to introduce the Act to the Northern Mariana Islands without preliminary studies. There is nothing which would prevent the Northern Mariana Islands from enacting their own Minimum Wage Legislation. Moreover, as set forth in section 502(b), the activities of the United States and its contractors in the Northern Mariana Islands will be subject to existing pertinent Federal Wages and Hours Legislation. (S. Rept. 94-433, pp. 77-78)

The Committee anticipated that by the termination of the Trusteeship, the Federal Government would have addressed the potential problems, and that Federal legislation would then be extended. The primary need for alien workers was likely to be in construction, temporary jobs that could be accommodated under Federal immigration laws. At the time the Covenant was negotiated, prospects for economic development focused on tourism and anticipated Department of Defense use of Tinian.

Upon termination of the Trusteeship, the CNMI became a territory of the United States and its residents became United States citizens. Although the population of the CNMI was only 15,000 people in 1976 when the Covenant was approved, the population (as of July 1999) is now estimated at 79,429. The rapid increase in population coincides with the assumption of immigration control by the CNMI. According to the most recent statistical survey by the CNMI, 78 percent of the CNMI population were United States citizens in 1980. That figure had declined to less than 47 percent by 1990 and to 42 percent by 1991. In 1980, total non-U.S. citizen residents totaled only 3,753 of whom 1,593 were citizens of the freely associated states and only 2,160 came from outside Micronesia.

Short after the Covenant went into effect, the CNMI began to experience a growth in tourism and a need for workers in both the tourist and construction industries. Interest also began to grow in the possibility of textile production in both the CNMI and Guam. Initial interest was in production of sweaters made of cotton, wool and synthetic fibers. The CNMI, like the other territories except for Puerto Rico, is outside the U.S. customs territory but can import products manufactured in the territory duty free provided that the products meet a certain value added amount under General Note 3(a) of the Tariff Schedules (then called Headnote 3(a)). The first company began operation in October, 1983 and within a year was joined by two other companies. Total employment for the three firms was 250 of which 100 were local residents. At the time, Guam had a single firm, Sigallo-Pac, also engaged in sweater manufacture with 275 workers, all of whom, however, were U.S. citizens.

Attempts by territories to develop textile or apparel industries have traditionally met resistance from Stateside industries. The use of alien labor in the CNMI intensified that concern, and efforts began in 1984 to sharply cut back or eliminate the availability of duty free treatment for the territories. The concerns also complicated Senate consideration of the Compacts of Free Association in 1985 and led to a delay of several months in floor consideration when some Members sought to attach textile legislation to the

Compact legislation. The response from the CNMI was that they would look to limitations on immigration and increased requirements for use of local labor.

The labor force (all persons 16+ years including temporary alien labor) grew from 9,599 in 1980 to 32,522 in 1990. Manufacturing grew from 1.9 percent of the workforce in 1980 to 21.9 percent in 1990, only slightly behind construction which goes from 16.8 percent to 22.2 percent in the same time frame. The construction numbers track a major increase in hotel construction. At the same time, increases in the local minimum wage were halted, as the CNMI began to increasingly rely on imported temporary workers.

The majority of the population resides on Saipan, which is the economic and government center of the CNMI. The most recent statistics (March 1999) from the CNMI estimate the population of Saipan at 71,790. U.S. citizens are estimated at 30,154 of whom 24,710 are CNMI born. There are 41,636 aliens of whom about 4,000 are from the freely associated states.

There is also a significant population of illegal aliens with estimates ranging from 3,000 to as high as 7,000 persons. The April 1999 CNMI report on the joint Federal-CNMI initiative on Labor, Immigration, and Law Enforcement noted that a limited immunity program enacted in September 1998 had resulted in almost 2,000 illegal aliens registering by March of 1999. The CNMI relies on its Central Statistics Division to estimate the illegal alien population at less than 3,000. The 1998 report from the Administration on the law enforcement initiative (fourth report) estimated the number of unauthorized aliens at 7,000.

The 1995 census statistics from the Commonwealth lists total unemployment at 7.1 percent with CNMI born at 14.2 percent and Asia born at 4.5 percent. The draft 1999 second quarter report from the CNMI Central Statistics Division lists unemployment among CNMI-born U.S. citizens at 15.3 percent with nonresident non-citizen unemployment at 3.1 percent. Of the 15,251 U.S. residents above 16 years in the CNMI, 10,438 are in the labor force with employment of 9,039. The local U.S. citizen unemployment rate suggests that guest workers are taking jobs from local residents.

The percentage of non-U.S. citizens in the labor force has increased from 27.5 percent in 1973 to 37.8 percent in 1980 to 74.9 percent in 1990 with a decline to 73.3 percent in 1995. Recent statistics indicate that non-U.S. citizens represent 77.4 percent of the labor force on Saipan in the first quarter of 1999. The comparable figure for Saipan for 1995 was 74.9 percent. The figures, however, are more striking when the composition of the public versus private sector is examined. For the first quarter of 1999, the public sector on Saipan had a workforce of 2,463 of whom only 9 percent were non-U.S. citizens. For the private sector on Saipan during the same period, 84 percent of the workforce were non-U.S. citizens.

While jobs in the garment industry are unattractive to local residents, local businesses are using the guest worker program and the willingness of alien workers to work for lower wages to fill skilled managerial and professional positions (including plumbers and electricians, as well as accountants) with foreign workers. For example, the June 14, 1999 Marianas Variety lists a variety of job

offers, including: Plumber—\$3.25/hr; Accountant—\$3.05/hr; Carpenter—\$3.05/hr; and Electrician—\$4.14/hr.

One result of this situation is that the public sector, where average wages exceed both the local and Federal minimum wage, has become a primary employer for local residents. What job creation exists in the private sector goes to foreign workers. The ability to obtain skilled foreign workers at low wages effectively forecloses opportunities for U.S. residents in both entry and skilled positions. The private sector job market for recent CNMI graduates is better in Guam than in the CNMI. Another consequence is that there is little incentive for specialized or graduate training since companies can readily obtain experienced workers from foreign countries at wage levels that are unattractive to CNMI residents. A by-product of this situation has been increased pressure on the public sector to expand solely to provide jobs. The average wage rate for the public sector for the first quarter of 1999 was reported by the CNMI Department of Commerce as \$12.89/hr. For the CNMI, the lack of private sector jobs for local residents has frustrated efforts to trim the public sector budget. As the CNMI becomes more dependent on local revenues to pay the wages of public sector employees, it also becomes more dependent on a system of imported labor at the expense of local jobs in the private sector. This situation was neither intended nor contemplated by either side in the negotiations that led to the Covenant.

Repeated allegations of violations of applicable federal laws relating to worker health and safety, concerns with respect to immigration problems, including the admission of undesirable aliens, and reports of worker abuse, especially in the domestic and garment worker sectors, led to the inclusion of a \$7 million set aside in appropriations in 1994 to the Department of the Interior to support Federal agency presence in the CNMI. The Department of the Interior reported to the Committee on April 24, 1995 that:

- (1) \$3 million would be used by the CNMI for a computerized immigration identification and tracking system and for local projects;
- (2) \$2.2 million would be used by the Department of Justice to strengthen law enforcement, including the hiring of an additional FBI agent and Assistant U.S. Attorney;
- (3) \$1.6 million would be used by Labor for two senior investigators as well as training; and
- (4) \$200,000 would be used by Treasury for assistance in investigating violations of Federal law with respect to firearms, organized crime, and counterfeiting.

In addition, the report recommended that Federal law be enacted to phase in the current CNMI minimum wage rates to the Federal minimum wage level in 30 cent increments as then provided by CNMI legislation, end mandatory assistance to the CNMI when the current agreement was fulfilled, continue annual support of Federal agencies at a \$3 million/year level (which would include funding for a detention facility that meets Federal standards), and possible extension of Federal immigration laws.

During the 104th Congress, the Senate passed S. 638, legislation supported by the Administration. Concern over the effectiveness of the CNMI immigration laws and reports of the entry of organized

criminal elements from Japan and China led the Committee to include a provision to require the Commonwealth “to cooperate in the identification and, if necessary, exclusion or deportation from the Commonwealth of the Northern Mariana Islands of persons who represent security or law enforcement risks to the Commonwealth of the Northern Mariana Islands or the United States.” (Sec. 4 of S. 638) No action was taken by the House.

In February, 1996, Members of the Committee visited the CNMI and met with local and federal officials. In addition, the Members inspected a garment factory and met with Bangladesh security guards who had not been paid and who were living in substandard conditions. As a result of the meetings and continued expressions of concern over conditions, the Committee held an oversight hearing on June 26, 1996, to review the situation in the CNMI. At the hearing, the acting Attorney General of the Commonwealth requested that the Committee delay any action on legislation until the Commonwealth completed a study on minimum wage and promised that the study would be completed by January. That timing would have enabled the Committee to revisit the issue in the April-May 1997 period after the Administration had transmitted its annual report on the law enforcement initiative. While the CNMI Study was not finally transmitted until April, the Administration did not transmit its annual report, which was due in April, until July. On May 30, 1997, the President wrote the Governor of the Northern Marianas that he was concerned over activities in the Commonwealth and had concluded that federal immigration, naturalization, and minimum wage laws should apply.

Given the reaction that followed the President’s letter, the Chairman of the Committee asked the Administration to provide a drafting service to the language needed to implement the recommendations in the annual report and informed the Governor of the Commonwealth of the request and that the Committee intended to consider the legislation after the Commonwealth had an opportunity to review it. The drafting service was not provided until October 6, 1997 and was introduced on October 8, 1997, as S. 1275, shortly before the elections in the CNMI. The Committee deferred hearings so as not to intrude unnecessarily into local politics and to allow the CNMI an opportunity to review and comment on the legislation after the local elections.

The U.S. Commission on Immigration Reform conducted a site visit to the Northern Marianas in July 1997 and issued a report which in general supported extension of immigration laws. The report, however, also raised some concerns with the extension of U.S. immigration laws. The report found problems in the CNMI “ranging from bureaucratic inefficiencies to labor abuses to an unsustainable economic, social and political system that is antithetical to most American values” but “a willingness on the part of some CNMI officials and business leaders to address the various problems”.

The Report found that:

—The CNMI Department of Labor and Immigration “does not have the capacity, nor is it likely to develop one, to prescreen applicants for entry prior to their arrival on CNMI territory.” This leads to the situation of the Bangladesh workers who arrive and find

there is no work as well as the entry of those with criminal or other disqualifying records. Federal law enforcement officials are mentioned as not providing information to the CNMI due to concerns over security and corruption.

—The levels of immigration led to dependence on government employment or benefits for U.S. residents unable to find work and younger residents having to leave to find work. The Report also noted that those on welfare could still hire domestics.

—The economy is unsustainable because there will be no advantage for the garment industry when the multi-fibre agreement comes into force in 2005. Others also share the view that the garment industry presence in the CNMI is temporary. In September 1997, the Bank of Hawaii concluded that the presence of the garment industry was a result of “a unique and temporary comparative economic advantage” and that the CNMI should begin to plan for a “transition to an exclusively tourism-driven economy”.

—Foreign workers are exploited with retaliation against protesters, failure of the CNMI government to prosecute, unreliable bonding companies, exorbitant recruitment fees, suppression of basic freedoms, and flagrant abuses of household workers, agricultural workers, and bar girls.

—The CNMI has entered into agreements dealing with trade and immigration with the Philippines and China over U.S. State Department objections.

—The CNMI has no asylum policy or procedure placing the United States in violation of international obligations.

—The temporary guest worker for permanent jobs creates major policy problems as well as creating a two class system where the majority of workers are denied political and social rights. In the U.S. proper, such workers would be admitted for residence and could become citizens. Worse, the children of these workers are U.S. citizens. The children of foreign mothers now account for 16 percent of U.S. citizens.

The Report, however, also raised some concerns over an immediate imposition of U.S. immigration laws:

—Absent a transition, few workers would be eligible for a visa and there would be an impact on the economy.

—The Federal Government is not positioned to take over and enforce immigration laws. The Report cited INS officials indicating a need for 60 positions and the general disinterest of Federal agencies such as INS, OSHA, and Labor in enforcing Federal laws unless Interior underwrote the cost.

—The relationship between INS and the local Department was very bad and the U.S. Department of State has no operational relations with CNMI immigration. Without local cooperation, federal enforcement would be more difficult.

The Report noted that the CNMI was not likely to take any corrective action absent a threat of Federal takeover. The Report recommended that the United States and CNMI negotiate an agreement to eliminate abuses, backed by the threat of U.S. takeover. Specifically, the Report recommended:

—phase out (3–5 years) foreign contract workers in exploitive industries (garment workers, domestics, bar girls);

- adopt specific provisions for professionals and executives (mainly wages);
- limited provisions for temporary workers in permanent construction, hotel, and restaurant jobs with phase in of wages to Guam levels and decreasing slots for foreign workers;
- guaranteed access to asylum procedures;
- legal permanent resident status to contract workers who would be eligible for such status elsewhere in the U.S.;
- effective prescreening of foreign contract workers as is done elsewhere in the U.S.;
- control of recruitment fees;
- vigorous enforcement of local laws, especially on payment of wages and working conditions;
- increase inspections; and
- increased Federal training.

The Committee conducted a hearing on March 31, 1998, on S. 1275 and S. 1100, similar legislation introduced by Senator Akaka and others. The Committee heard from the Administration, the government of the CNMI, workers and representatives of the local industry, as well as public witnesses.

On May 20, 1998, the Committee ordered S. 1275 favorably reported with amendments. The Committee amendments deleted provisions altering General Note 3(a) of the tariff schedules and provisions dealing with the “Made in the USA” label. The Committee also deleted the provision that directly phased in minimum wage rates to the Federal rate in favor of an industry committee as had been the practice in other territories. The Committee adopted the provisions for extension of Federal immigration laws with several changes. In response to the Governor’s request that he be given an opportunity to prove that the CNMI could implement an effective immigration program, the Committee made extension contingent upon a finding by the Attorney General that the CNMI had either not adopted an effective immigration system or had not demonstrated a commitment to enforce it.

On October 6, 1998, the Secretaries of Labor, Commerce, the Interior, and the Attorney General wrote a letter to the Committee urging action on the Administration’s proposal, but the Senate was not able to consider the legislation prior to adjournment. On May 13, 1999, Senator Murkowski, for himself and Senators Akaka and Bingaman, introduced S. 1052, incorporating the Committee reported immigration provisions from last Congress, with a minor amendment.

The presence of a large alien population in the CNMI is not simply a matter of local concern. Although temporary workers admitted into the CNMI may not enter elsewhere in the United States and their presence in the CNMI does not constitute residence for the purpose of obtaining U.S. citizenship, that limitation does not apply to their children. Persons born in the CNMI obtain U.S. citizenship by birth and eventually will be able to bring their immediate families into the United States. There is an increasing number of births to non-citizen mothers. In 1985, of 675 births, 260 were to non-citizen mothers. While the number of U.S. citizen mothers remained relatively constant, the number of non-citizen mothers increased to 581 by 1990, 701 in 1991, 859 in 1992, and

continued around 900–1000 with the exception of 1,409 in 1996. For that year, total births, 1,890 with the percentage of U.S. citizen mothers at 25 percent. While some of the presumed non-citizen mothers are likely to be married to CNMI resident, others are not, and all entered outside of Federal immigration laws. The result is that there is an increasing number of persons obtaining U.S. citizenship outside the boundaries of U.S. immigration and naturalization laws. There are also incidental effects on various Federal programs, such as education, that the children and their immediate relatives will be eligible for. To the extent that the current CNMI immigration and wage system results in structural unemployment among resident U.S. citizens, there are also effects on Federal programs providing assistance to the poor.

The Commission on Immigration Reform noted most of the elements that have been mentioned in various reports. The use of temporary workers to fill permanent jobs is a direct policy issue for the Federal Government. The CNMI does not have an asylum policy, which is a Federal obligation. Earlier this year, an organized operation from China attempted to smuggle individuals into Guam. Eventually, the Federal Government adopted a policy of intercepting boats at sea and diverting them to the Northern Marianas prior to repatriating the individuals and prosecuting the smugglers. Although Federal immigration laws did not apply, federal agencies did consider any requests for asylum, but the absence of Federal law complicated consideration.

Concerns have also arisen over the use of the Northern Marianas for importation and transshipment of drugs. The June 17 Marianas Variety reported the Finance Department's Division of Customs to have confiscated over \$2.5 million of crystal metamphetamine in 1998 with an increasing number of drug arrests. A related concern raised by the Administration has been the ability of the CNMI to exclude individuals, especially members of organized crime from Japan and China. The CNMI does not have a data base to screen immigrants, and accomplishes most of its screening on arrival. The Federal Government, however, for those countries that require visas, does its screening in the foreign country. Federal law enforcement agencies have cited security concerns as a major impediment to sharing information with the CNMI government.

Another concern has been the increase in the level of communicable diseases, especially tuberculosis. The April 1999 CNMI report on Law Enforcement noted that the CNMI has committed to require screening of all workers and that under current regulations, "if a worker is diagnosed with a communicable disease within ninety days of entry into the CNMI, they are deported back to their country of origin." The report did note that they were attempting to deal with individuals who "once diagnosed would become illegal and disappear rather than come in for treatment." The report also states that most cases are reactivation disease. "That is they are infected with TB but have no signs of TB upon entry into the CNMI. After being in the CNMI for 2–5 years, their TB reactivates and they become contagious." (p.49) Both Guam and the CNMI have rates of active TB well in excess of the North American average of 9 cases per 100,000. The 1995 Division of Public Health assessed the mean for the CNMI from 1991–1995 at 77.9 cases per

100,000 population, the majority among the non-resident contract workers.

CONCLUSION

As a result of these concerns, the Committee has concluded that Federal immigration laws should be extended to the Commonwealth at this time. The Covenant contemplated that the laws would be extended at some point after termination of the Trusteeship, and further delay can only serve to exacerbate current problems and the burden on local government in trying to replicate Federal capacities and conform to Federal policies. The Committee is sensitive to the concerns raised by the government of the Commonwealth and from various individuals and firms in the Commonwealth over the potential effects of this extension. The amendment addresses those concerns and significantly expands the provisions contained in the measure reported during the last Congress. The amendment also specifically addresses the need for Federal agencies, notably the Departments of Commerce and Labor, to take a more active and aggressive role in helping the local government diversify and strengthen the local economy and recruit, train, and hire local residents and residents of the freely associated states. A transition to full application of federal immigration laws can be accomplished in an orderly manner with limited disruption to the local economy, especially if Federal agencies consult closely with local elected officials in the implementation and enforcement of federal laws.

LEGISLATIVE HISTORY

S. 1052 was introduced on May 13, 1999. The legislation is similar to sections 1 and 2 of S. 1275 as reported by the Committee during the 105th Congress. A hearing was held on the legislation on September 14, 1999.

At the business meeting on October 20, 1999, the Committee on Energy and Natural Resources ordered S. 1052, as amended, favorably reported.

COMMITTEE RECOMMENDATIONS AND TABULATION OF VOTES

The Committee on Energy and Natural Resources, in open business session on October 20, 1999, by a unanimous voice vote of a quorum present, recommends that the Senate pass S. 1052, if amended as described herein.

COMMITTEE AMENDMENTS

During the consideration of S. 1052, the Committee adopted an amendment in the nature of a substitute.

The Committee amendment makes several changes to the legislation as introduced. The most significant is the elimination of provisions recommended by the Committee last Congress that would have conditioned extension of federal immigrant laws on a finding by the Attorney General that the Commonwealth of the Northern Mariana Islands (CNMI) did not have the institutional capability to meet immigration standards or had not demonstrated a genuine commitment to do so. The Representatives of the CNMI testified

that they did not trust the Administration to promulgate reasonable standards or do a fair evaluation. The CNMI believed that since the Administration supported extension of Federal law, the Attorney General's conclusion was predetermined. On the other side, the Administration opposed the provision because they believed that the CNMI would only use the promulgation of standards and the finding as excuses to litigate and delay extension of Federal law. While there is a limited possibility that a local immigration system could be implemented in a manner consistent with federal policies there does not appear to be a way to reach that result. As a result, the Committee amendment deletes the contingency and provides that Federal immigration laws will apply to the CNMI.

The Committee has adopted a series of additional amendments to provide for a smooth transition to address some of the concerns expressed by the CNMI. The Committee has adopted a Statement of Purpose to guide federal agencies in implementing the legislation. The Statement makes clear that the Committee expects the transition to be orderly and that federal agencies should seek to minimize potential adverse effects. Some impact is unavoidable, but the CNMI has a considerable economic potential. A commitment by Federal agencies to support local legitimate businesses in tourism and encourage diversification will not only limit adverse effects but may also serve to bring more of the local residents into the work-force.

The legislation as introduced provided for transition period of not more than ten years. The CNMI expressed concern that Federal agencies would use the flexibility to sacrifice the local economy to a precipitous implementation. The Committee amendment eliminates that uncertainty by specifying that the transition period will extend to December 31, 2009. The amendment provides that each agency having responsibilities during the transition shall promulgate regulation. In adopting such regulations, the agency should be guided by the Statement of Purpose and not solely by administrative convenience.

During the transition period, the Secretary of Labor will provide for a system to allocate permits for temporary labor that will be reduced to zero by the end of the transition period. The amendment does not require the Secretary to adopt any particular system, but the Secretary should adopt a system that in the Secretary's estimation is most consistent with the Statement of Purpose. The Secretary is not required to use the entire transition period nor to adopt an even percentage reduction over the period, however the Secretary should work closely with other Federal agencies and the CNMI to coordinate the annual allocation with efforts to recruit, train, and hire persons authorized to work in the United States. To the extent the Secretary of Labor is successful in using the technical assistance language in the Committee amendment (sec. 2(c)) and other authorities to obtain such workers, the Secretary will be able to reduce the need for temporary alien workers. The objective remains an orderly and smooth transition to the full application of Federal laws.

The legislation, as introduced, contained a provision that would extend the transition provisions for the hotel industry for five year

periods if the Attorney General determined that there was a continuing need for such workers. The Administration requested that the provision be limited to a single period of five years or less. The CNMI, on the other hand, noted that if the Committee intended to protect the tourism industry, that industry was broader than just hotels. The CNMI also expressed concern that such a provision might be necessary for any new industries that might be developed. The Committee amendment broadens the provision to include legitimate businesses in the tourism industry and provides that no more than two five years extensions may be granted. The Attorney General should provide an expansive definition to the term "tourism" to include not only those businesses exclusively engaged in tourist activities, but also those businesses that support or depend on such activities such as laundries. The Attorney General should construe the term "legitimate" narrowly and exclude any business that engages "directly or indirectly" in prostitution or any activity that is illegal under Federal or local law. Operations that are merely fronts for other activities should also be excluded. The determination by the Attorney General is within the Attorney General's sole discretion and is not reviewable. This provision provides a safety net for those firms and employers who are engaged in legitimate businesses in tourism. The Committee amendment also provides for a one-time five year extension for other industries if the Secretary of Commerce concludes that such an extension is necessary for growth or diversification. Effective implementation of federal local agency authority during the transition should obviate the need for any extension. The Committee amendment also requires the Attorney General to report to the Committee if any extension is granted on the reasons for the extension, and whether further authority should be enacted for an additional extension. At this time the Committee cannot estimate that the needs will be for workers in the CNMI by 2015, but hopes that both Federal and local authorities will use the transition period wisely.

On criticism of the CNMI was that certain aliens were hired and remained in the CNMI for extended periods with the political and civic rights normally extended to aliens admitted into the United States under Federal laws. The CNMI sought to deal with that concern by enacting legislation to limit the time an alien could remain in the CNMI to three years. That provision, however, frustrates legitimate businesses who seek to retain workers who they have hired and trained. While the overall objective of the legislation is to eventually replace the present temporary contract workers with persons admitted on a permanent basis under Federal law, there are equities for both workers and employers where individuals have been working continuously in legitimate businesses in the CNMI. Accordingly, the Committee amendment provides a one-time grandfather provision that would allow an employer to petition for any employee who has been employed in that business for the past five years to have the employee classified as an employment-based immigrant under federal law. The Committee amendment provides for certain checks on the authority. The businesses must be legitimate, using the same narrow definition applicable for the transition extension provisions. The employee must have been employed by that business for five years and the business must

have a reasonable expectation of making sufficient revenues to continue to employ the alien. This provision applies only to individuals employed in a business, and would therefore exclude individuals employed as domestics by a family or individual (unless the individual were an employee of a business that provided cleaning or domestics and have been employed directly by that business for the prior five years and not by individuals). The provision also excludes individuals who may be on the payroll of a business, but who in fact do not work in the business, such as a domestic whose salary is paid from a business owned or operated by the family with the domestic. This provision will assist legitimate businesses in the transition. To the extent that legitimate businesses can retain current workers, the need for additional alien temporary workers during the transition period will be reduced.

The Committee has expanded the technical assistance provisions contained in the legislation to specifically charge the Secretary of Commerce to provide assistance to encourage growth and diversification of the local economy and the Secretary of Labor to provide assistance to recruit, train, and hire persons authorized to work in the United States. There is concern over the level of unemployment among local residents in the CNMI. Specific action should be taken to provide employment opportunities. The transition period also offers a chance to provide employment opportunities for residents of the freely associated states. The CNMI also expressed concern that the United States was not promoting the CNMI as a tourist destination. The Committee amendment requires the Administration to submit a report to Congress within five years after the date of enactment of the Act to review progress in implementing this legislation and state what efforts have been made to diversify and strengthen the local economy, including promoting the CNMI as a tourist destination.

There are important reasons that require that the United States control entry into its territory in the CNMI. If Federal agencies charged with responsibilities under this legislation for extending those laws do so with sensitivity to local economic needs, a commitment to diversifying the local economy, and with dedication to recruiting, training, and hiring local residents and citizens of the freely associated states, the end result will be a stronger local economy and local government.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title and purpose

This section is self-explanatory. The statement of purpose, while not referenced directly in the amendments to Public Law 94-241, is intended to guide and direct Federal agencies in implementing the provisions of this Act.

Section 2. Immigration reform for the commonwealth of the Northern Mariana Islands

Subsection (a) amends Public Law 94-241 (90 Stat. 263, 48 U.S.C. 1801) (the "Covenant Act") which approved the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Po-

litical Union with the United States of America (the “Covenant”) by adding a new section 6 at the end.

The new section 6 provides for the orderly extension of Federal immigration laws to the CNMI under a transition program designed to minimize adverse effects on the economy. Specific provisions are made to ensure access to workers in legitimate businesses after the end of the transition and for the adjustment of those foreign workers who are presently in the CNMI and who have been continuously employed in a legitimate business for the past five years.

Subsection (a) provides, except for any extensions that may be provided by the Attorney General to specific industries in accordance with the provisions of subsection (d), for a transition program ending on December 31, 2009 to provide for the issuance of: non-immigrant temporary alien worker; family-sponsored, and employment-based immigrant visas.

Subsection (b) addresses the special problems faced by employers in the CNMI due to the Commonwealth’s unique geographic and labor circumstances by providing an exemption from the normal numerical limitations on the admission of H-2B temporary workers found in the INA. This subsection enables CNMI employers to obtain sufficient temporary workers, if United States labor and lawfully admissible freely associated state citizen labor are unavailable, for labor sensitive industries such as the construction industry.

Subsection (c) sets forth several requirements during the transition program which must be met with respect to temporary alien workers who would otherwise not be eligible for nonimmigrant classification under the INA. The intent of this subsection is to provide a smooth transition from the CNMI’s current system. The Secretary of Labor will be guided by the Act, including the Statement of Purpose and the explanation in the Committee Amendments section of this Report in establishing the system for the allocating and determining the number of permits. Subsection (j) provides for petitions to adjust the status of certain long-term employees. If any petitions are granted under subsection (j), the number of permits are to be reduced accordingly to the extent that the system adopted by the Secretary of Labor assumed an allocation of permits for the positions held by persons whose status is adjusted under subsection (j).

Subsection (d) provides general limitations on the initial admission of most family-sponsored and employment-based immigrants to the CNMI, as well as a mechanism for exemptions to these general limitations. This subsection is intended to address the concerns expressed by this Committee, in approving the Covenant in 1976, regarding the effect that uncontrolled immigration may have on small island communities. This subsection further provides for a “fail-safe” mechanism to permit, in cases of labor shortages, that certain unskilled immigrant worker visas intended for the CNMI be exempted from the normal worldwide and per-country limitations found in the INA for such unskilled workers. This subsection does not increase the overall number of aliens who may immigrate to the United States each year.

Paragraph (1) of this subsection authorizes the Attorney General, after consultation with the governor and the leadership of the Legislature of the CNMI and in consultation with other Federal Government agencies, to exempt certain family-sponsored immigrants who intend to reside in the CNMI from the general limitations on initial admission at a port-of-entry in the CNMI or in Guam. For example, unless the CNMI recommends otherwise, most aliens seeking to immigrate to the CNMI on the basis of a family-relationship with a United States citizen or lawful permanent resident would be required to be admitted as a lawful permanent resident at a port-of-entry other than the CNMI or in Guam, such as Honolulu.

Paragraph (2) generally provides the Attorney General with the authority to admit, under certain exceptional circumstances and after consultation with federal and local officials, a limited number of employment-based immigrants without regard to the normal numerical limitations under the INA. The purpose of this provision is to provide a “fail-safe” mechanism during the transition program in the event the CNMI is unable to obtain sufficient workers who are otherwise authorized to work under U.S. law. This paragraph would also provide a mechanism for extending the “fail-safe” mechanism beyond the end of the transition program, for a specified period of time, with respect to legitimate businesses in the CNMI.

Subparagraph (A) provides that the Attorney General, after consultation with the Secretary of Labor and the Governor and leadership of the Legislature of the CNMI, may find that exceptional circumstances exist which preclude employers in the CNMI from obtaining sufficient work-authorized labor. If such a finding is made, the Attorney General may establish a specific number of employment-based immigrant visas to be made available under section 203(b) of the INA during the following fiscal year. The labor certification requirements of section 212(a)(5) will not apply to an alien seeking benefits under this subsection.

Subparagraph (B) permits the Secretary of State to allocate up to the number of visas requested by the Attorney General without regard to the normal per-country or “other worker” employment-based third preference numerical limitations on visa issuance. These visas would be allocated first from unused employment-based third preference visa numbers, and then, if necessary, from unused alien entrepreneur visa numbers.

Subparagraph (C) deals with entry of persons with employment-based immigrant visas and is self-explanatory. Persons who are otherwise eligible for lawful permanent residence under the transition program may have their status adjusted in the CNMI.

Subparagraph (D) provides that any immigrant visa issued pursuant to this paragraph shall be valid only to apply for initial admission to the CNMI. Any employment-based immigrant visas issued on the basis of a finding of “exceptional circumstances” as described in subparagraph (A) above, would be valid for admission for lawful permanent residence and employment only in the CNMI during the first five years after initial admission. Such visas would not authorize permanent residence or employment in any other part of the United States during this five-year period. The subparagraph also provides for the issuance of appropriate documentation

of such admission, and, consistent with the INA, requires an alien to register and report to the Attorney General during the five-year period. This five-year condition is intended to prevent an alien from using the CNMI-only transition program as a loophole to gain employment in another part of the United States. Without this condition, such an alien, as a lawful permanent resident, would be eligible to work anywhere in the United States, thereby avoiding the lengthy (seven years or longer) waiting period currently faced by other aliens seeking unskilled immigrant worker visas.

Subparagraph (E) provides that an alien who is subject to the five-year limitation under this paragraph may, if he or she is otherwise eligible, apply for an immigrant visa or admission as a lawful permanent resident on another basis under the INA.

Subparagraph (F) provides for the removal from the United States, of any alien subject to the five-year limitation if the alien violates the provisions of this paragraph, or if the alien is found to be removable or inadmissible under applicable provisions of the INA.

Subparagraph (G) provides the Attorney General with the authority to grant a waiver of the five-year limitation in certain extraordinary situations where the Attorney General finds that the alien would suffer exceptional and extremely unusual hardship were such conditions not waived. The benefits of this provision would be unavailable to a person who has violated the terms and conditions of his or her permanent resident status, such as an alien who has engaged in the unauthorized employment.

Subparagraph (H) provides for the expiration of limitations after five years.

Subparagraph (I) provides for not more than two five-year extensions, as necessary, of the employment-based immigrant visa programs of this paragraph, with respect to workers in legitimate businesses in the tourism industry. This provision is designed to ensure that there be a sufficient number of workers available to fill positions in the tourism industry after the transition period ends. The subparagraph also permits a single five-year extension for legitimate businesses in other industries. The provisions are explained more fully under the discussion of Committee Amendments.

Subsection (e) deals with nonimmigrant investor visas and is self-explanatory.

Subsection (f) deals with persons lawfully admitted into the CNMI under local law and is self-explanatory.

Subsection (g) provides travel restrictions for certain applicants for asylum and is self-explanatory.

Subsection (h) deals with the effect of these provisions on other law and is self-explanatory.

Subsection (i) provides that no time spent by an alien in the CNMI in violation of CNMI law would count toward admission and is self-explanatory.

Subsection (j) provides a one-time grandfather for certain long-term employees and is more fully discussed in the section of the Report describing the Committee Amendment.

Section 2, subsection (b) provides for three conforming amendments to the INA.

Section 2, subsection (c) provides for technical assistance and is discussed more fully in the section of the Report describing the Committee Amendment.

Section 2, subsection (d) provides administrative authority for the Departments of Justice and Labor to implement the statute and is self-explanatory. The requirement that all expenditures require a non-federal matching contribution of 50 percent applies only to expenditures involving the additional incremental funding and is to be read to require that those expenditures be at least 50 percent non-federal. The provision should not be read to cap non-federal contributions, but to require that, at a minimum, each federal dollar of the additional funding be matched by a dollar of non-federal funds.

Section 2, subsection (e) provides for a report to Congress, is discussed in the section of the Report on Committee Amendments and is self-explanatory.

Section 2, subsection (f) limits the number of alien workers present in the CNMI prior to the transition program effective date and is self-explanatory.

Section 2, subsection (g) authorizes appropriations and is self-explanatory.

COST AND BUDGETARY CONSIDERATIONS

The Congressional Budget Office cost estimate report had not been received at the time the report was filed. When the report becomes available, the Chairman will request that it be printed in the Congressional Record for the advice of the Senate. During the 105th Congress, CBO estimated that the costs of similar provisions of S. 1275 would be less than \$500,000 in the first year and between \$7 million and \$8 million over a five year period. CBO also determined that the provisions contained both intergovernmental and private sector mandates.

REGULATORY IMPACT EVALUATION

In compliance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out S. 1052. The bill is not a regulatory measure in the sense of imposing Government-established standards or significant economic responsibilities on private individuals and businesses.

The legislation contemplates the possibility of extension of the Federal immigration laws. To the extent that personal information is obtained as part of the normal administration of the program elsewhere in the United States, the same provisions would apply in the Northern Mariana Islands. If the Commonwealth administers and enforces an effective immigration system under current law and Federal law is not extended, it is likely that the same information would be obtained. Therefore, there would be no additional impact on personal privacy.

Some additional paperwork would result from the enactment of S. 1052, as ordered reported, but the Committee does not believe that it would be significant.

EXECUTIVE COMMUNICATIONS

On June 28, 1999, the Committee on Energy and Natural Resources requested legislative reports from the Department of S. 1052 and the Office of Management and Budget setting forth Executive agency recommendations on S. 1052. These reports had not been received at the time the report on S. 1052 was filed. When the reports become available, the Chairman will request that they be printed in the Congressional Record for the advice of the Senate. The testimony provided by the Immigration and Naturalization Service as the Committee hearing follows:

STATEMENT OF BO COOPER, GENERAL COUNSEL, IMMIGRATION AND NATURALIZATION SERVICE, DEPARTMENT OF JUSTICE

Mr. Chairman and Members of the Committee, good morning. My name is Bo Cooper and I am the General Counsel of the Immigration and Naturalization Service of the Department of Justice (INS). I am appearing on behalf of the Administration. Thank you for the opportunity to appear before you today to discuss immigration reform for the Commonwealth of the Northern Mariana Islands (CNMI). We appreciate the Committee's interest in our views.

Through its favorable report in the last Congress of S. 1275, the introduction by Chairman Murkowski and Senators Bingaman and Akaka of S. 1052 (the Northern Mariana Islands Covenant Implementation Act) in the 106th Congress, and its hearings on the urgent immigration, labor and other problems that exist in the CNMI, this Committee has demonstrated a strong bipartisan commitment to improving conditions in this United States territory. The Administration shares this goal, and is committed to working with Congress for the enactment of federal immigration law for the newest member of the American political family.

As you know, S. 1052 is essentially the same bill as the CNMI legislation reported by this Committee in the last Congress as S. 1275, with respect to immigration. A significant difference, of course, is that S. 1052 does not include S. 1275's provision regarding the minimum wage. Although immigration issues are the subject of my testimony today, I should note that the Administration continues to believe that federal minimum wage law needs to be enacted for this new part of our country. The Administration also supports provisions that would condition duty free access to the United States for apparel produced in the islands, and use of the "Made in the USA" label, on the employment of a specified amount of U.S. citizen labor, consistent with the original purposes of the underlying policies.

The Administration expects soon to submit to the Congress its comprehensive legislative proposal addressing the important non-immigration issues not included in S. 1052,

as well as immigration reform. We do not expect the immigration provisions in this forthcoming proposal to be substantially different from S. 1052, except for the necessary modifications to S. 1052 discussed in my statement today.

As former S. 1275 was originally drafted by the Administration at the request of Senator Murkowski, that legislation as introduced was entirely consistent with Administration policy toward the CNMI. There is one important difference between the Administration's original immigration proposal for the CNMI and the current S. 1052—the preliminary requirements of standards, findings, and provision for judicial review before the INA may take effect—that causes us serious concern. With the exception of those preliminary requirements, and several other necessary modifications to S. 1052 that the passage of time since 1997 and continued Administration review have revealed, I am pleased on behalf of the Administration today to support S. 1052 if amended, and urge its rapid approval by the Congress.

The CNMI's immigration policy is not consistent with American principles

The very serious problems I am here to discuss are not new. They have been worsening for some years. They were not, however, envisioned when the Covenant which united the islands and the United States was negotiated, and went into effect through the free choice of the people of the CNMI, as well as federal approval. In approving the Covenant, the people of the CNMI firmly stated their desire to assume membership in the community of shared values represented by the American flag, including the fundamental values of respect for law, equality, democracy and human rights. Among many other benefits, they were accorded the privilege of U.S. citizenship. With that privilege come responsibilities to uphold the values the American people hold dear.

The Covenant under which the islands became part of the United States provided for the application of U.S. law in the CNMI. Some laws were to take effect immediately, others later, and yet others as determined by subsequent federal law. The immigration and nationality laws of the United States come within the last category.

To not apply immediately the sovereign power of the United States to control its borders to a local jurisdiction within the United States was an extraordinary step. Congress has established a federal immigration system to serve the interests of the Nation as a whole. The States, territories and other non-federal authorities within the United States normally enjoy no power with respect to the classification of aliens. Federal authority over immigration serves vital national interests, including uniformity of treatment of nonresident foreign visitors, establishing one national policy on immigration to this country, protecting

the national security, and ensuring that the Nation speaks with one voice in matters of foreign policy.

Federal immigration authority was not immediately extended to the islands for several reasons. First, the islands were still to be of a territory that the United States administered as trustee for the United Nations until the trusteeship ended, and the Covenant entered into full force, in November, 1986. Extending U.S. immigration and nationality law before the trusteeship over the islands ended, and the termination accepted by the United Nations, could have given rise to charges from adversary nations that we had divided the territory and annexed part of it.

Second, the CNMI negotiators wished to ensure that their small islands would not be overwhelmed by large-scale immigration from nearby Asian nations, and feared that this would happen if the Immigration and Nationality Act (INA) were immediately extended to the CNMI. The Ford Administration and Congress agreed to accommodate this concern, for the time being, reserving the right to enact immigration and nationality laws after the end of the U.N. trusteeship at the sole discretion of the national government.

A third reason for not immediately applying the INA was the possibility that a national immigration policy review being conducted at the time might lead to special provisions in federal immigration law to address unique needs of our territories. This did not occur.

It is our strong view, Mr. Chairman, that the time has come to enact Federal immigration law for the CNMI. The CNMI has used the lack of such law for exactly the opposite purpose than it originally intended for having the INA not apply, at least temporarily, to the CNMI. Rather than limit immigration, the CNMI has engaged in the massive importation of low-paid temporary alien workers. Alien workers now comprise a majority of the population. The CNMI has attempted to fulfill its original purpose in not having the INA apply, however, by not letting individual workers stay more than a few years, then replacing them with new workers, and not letting most of its labor force become permanent members of the community. Under this system, a majority of the population never have the ability to help determine the public policies under which they live. Moreover, these workers are admitted into the CNMI under indenture contracts that give their employers virtually total control over the terms and conditions of their stay. This in turn makes them unacceptably vulnerable to exploitation and abuse.

A few statistics from the most recent annual report on the Federal-CNMI Initiative on Labor, Immigration and Law Enforcement in the Commonwealth of the Northern Mariana Islands, issued late in 1998, and from other recent sources, illustrate the magnitude of the problem. The CNMI has experienced explosive, self-imposed population growth during this decade. The population, which was

14,000 in 1975, grew to about 17,000 by 1990, but then exploded to nearly 60,000 by 1995. More than half of the current population are foreign workers. In addition to the large population of indentured alien workers present under authority of CNMI immigration law, an estimated 7,000 undocumented aliens reside in the CNMI.

Nor do the figures for aliens alone suffice to show the impact of the CNMI's immigration policies not just on the archipelago's population, but on the rest of the United States. An increasing percentage of the U.S. citizen population consists of children born in the CNMI to female aliens who would likely be inadmissible to the United States under the INA, but who have been able freely to enter the CNMI. These children are U.S. citizens by birth. They have, of course, all rights pertaining to U.S. citizenship, including the right to live in any part of the United States and, when they come of age, to sponsor their parents for immigration to the United States under the INA. They are also eligible for welfare and other government benefits on the same terms as other citizens.

On Saipan (by far the most populous island), there were, according to CNMI statistics, 32,822 Asian-born aliens in the labor force in February 1999—an increase of nearly 10,000 from the 1995 census, demonstrating continuing growth in the alien worker population. These indentured alien workers account for over 90 percent of the private sector workforce. With a virtually unrestricted supply of alien labor, and a resulting de facto wage ceiling at or near the CNMI's low minimum wage of \$3.05 per hour, economic growth in the CNMI has not resulted in good private sector jobs for the vast majority of the islands' citizens.

In the CNMI's upside-down economy built on unrestricted importation of low-skilled alien workers to fill permanent positions, few U.S. citizens will work for the CNMI's low minimum wage. It is far below what is required for a living wage, or what would be the prevailing market wage absent the CNMI's immigration policies. Poverty and unemployment rates among locally-born U.S. citizens are high. As last tabulated by the CNMI, the poverty rate for this group was 35 percent and unemployment rate 16 percent. The exception is U.S. citizens who have obtained positions in the public sector. The public sector employs 56 percent of locally-born U.S. citizen workers at wages several times higher than those available in private industry.

Despite the large CNMI bureaucracy and substantial federal financial assistance, CNMI infrastructure and services such as public health care, water, sewers, electricity and garbage disposal are increasingly inadequate to deal with the consequences of such massive immigration. Although the CNMI government has attempted to improve health screening of documented alien guest workers

present in the CNMI, communicable diseases, particularly tuberculosis, remain a serious threat.

Symptomatic of this economic and social system is the domestic service situation. According to the 1995 census, the 5,337 households headed by U.S. citizens employed 2,089 alien domestic workers, a rate of domestic service unheard of in the United States, at least in modern times. This domestic service situation did not develop because U.S. citizens in the CNMI were wealthy, but because of their nearly unrestricted access to exploitable low-wage alien labor. In fact, the U.S. Commission on Immigration Reform reported in 1997 that the CNMI government had found it necessary to enact a rule barring Food Stamp recipients from importing guest workers to work as their domestic servants. Needless to say, we are aware of no other U.S. jurisdiction that has had to address such a problem.

I want to emphasize that the Administration does not contend that the clock in the CNMI should be turned back to the 1970s, or that economic or population growth should not occur there. However, economic growth cannot justify abuse. The CNMI has gone down the wrong road with respect to its immigration policy, and that policy must change.

The developments I have outlined are the result of a CNMI immigration system that is inconsistent with the American values that underlie the INA. Our immigration system favors the controlled and responsible immigration of aliens for permanent residence, leading to eventual full and complete inclusion in the American community through the granting of U.S. citizenship. A central principle of the INA also is the unification of families.

The INA reflects the American tradition of employing U.S. workers in private sector jobs that promote the growth of a middle class, rather than importing and exploiting a rolling stream of alien workers, without permanent immigrant status or family ties, in low-paid permanent positions, most to be kept almost all the time on their employers' premises. The INA's provisions authorizing the employment of nonimmigrant aliens under certain circumstances are designed to ensure that such employment will not adversely affect the wages and working conditions of similarly situated U.S. workers.

The INA also incorporates our obligations under international law—consistent with the value we place upon human rights—to give aliens arriving in, or present in the United States the opportunity to obtain protection from torture, or persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.

The CNMI immigration system is fundamentally at odds with all of these features of U.S. immigration law. The CNMI has no procedure in place under which aliens physically present may make a claim for asylum or withholding of removal on the ground of persecution. Nor does the

CNMI have any procedure under which an alien may make a claim under the U.N. Convention against Torture that the alien should not be returned to a place where he or she will be tortured. The lack of refugee and torture protection means that nothing prevents an alien from being removed from the CNMI to a place where he or she will face persecution or torture. This situation in a place that flies the U.S. flag places us at serious risk of violating our international law obligations under the 1967 Refugee Protocol and the Convention against Torture—obligations which extend to the territory of the CNMI.

In contrast to the INA's prohibition of the importation of temporary nonprofessional alien workers to fill permanent jobs, the CNMI policy has led to the creation of a large, exploitable underclass of aliens (both documented and undocumented) present without family ties, and with no prospect of lawful social and political integration into the community in which they reside.

These fundamental inconsistencies between the CNMI's immigration policy and U.S. interests are further exacerbated by the practical problems faced by a group of small islands that is not a sovereign nation when it tries to exercise the sovereign power to control its borders. First, since the CNMI as a United States territory of course maintains no embassies or consulates abroad, and does not have the interaction a sovereign nation may have with others, it cannot screen applicants prior to their entry. The INS' experience over many years of immigration enforcement has convinced us that a "double-check" system is essential. A double-check system is one in which (except for temporary visitors from certain nations that the light of experience has shown present a low risk of violation) arriving aliens are screened twice, first by a consular officer overseas and then by an immigration inspector at a port of entry.

The CNMI cannot operate a double-check system. As a result of this structural deficiency, the CNMI is especially vulnerable to the operations of international organized crime, particularly since the CNMI does not have a law enforcement agency that federal authorities have deemed sufficiently secure to be granted access to federal "lookout" information. The vulnerability is not just speculative. The CNMI has been entered by organized crime rings from several countries.

Second, when a local jurisdiction within the United States such as the CNMI attempts to operate its own immigration system, it is virtually impossible for it to avoid entangling itself in foreign relations, since immigration is an international matter that requires frequent consultations and cooperation between national governments. Moreover, the CNMI's negotiation, or attempted negotiation, of "Memoranda of Understanding" with the Philippines and China has intruded into the responsibility of the United States government to conduct the foreign affairs of the Nation. Additionally, the treatment of alien

workers in the CNMI has caused irritations in the foreign relations of the United States with Nepal, Bangladesh, Sri Lanka, and the Philippines.

Third, the CNMI does not adequately document the entry of aliens. Despite substantial federal assistance devoted to helping the CNMI try to develop an immigration tracking system (the Labor and Immigration Identification and Document System (LIIDS)) compatible with federal systems, that goal seems as far away as ever. All that has been achieved is the issuance of labor identity cards, without any tie-in to immigration entry and exit.

The response of the CNMI government has been to concede that serious problems and abuses exist while making repeated promises of improvement. These promises have not resulted in meaningful reform, but only a few largely cosmetic changes that address symptoms rather than the underlying problem, and which are underfunded or contains loopholes and exceptions. The persistent and increasingly severe problems caused by the CNMI's economic and immigration policies, and the lack of any meaningful CNMI response to address them, led President Clinton to conclude in May of 1997 that federal immigration, naturalization and minimum wage laws should be applied to the CNMI, on a reasonable and appropriate phase-in schedule, and with special provisions necessary to avoid disruption to the islands.

Nothing has happened since then that warrants any change in the President's conclusion. The CNMI's indentured alien labor force has continued to increase, despite an ineffectual "moratorium" on their recruitment and importation. No significant improvements have been made in CNMI entry and exit tracking and processing. Mistreatment of indentured alien workers has continued. The system of relying on a large pool of exploited alien labor comprising more than half the population has not changed for the better. As Chairman Murkowski aptly said in his statement introducing S. 1052, the additional year gained by the CNMI as a result of S. 1275 not having been enacted into law in 1998 has expired. It is time for action now.

S. 1052, with improvements would bring the CNMI into conformity with U.S. immigration policy while providing safeguards against economic or social disruption

Enacting S. 1052—with the few changes we believe are needed to the bill—would be real immigration reform. It would begin the essential process of returning the CNMI to an immigration system that reflects American values and principles. The bill, with the changes we recommend, provides a generous implementation and transition period in which to phase out the CNMI's alien worker program. The Administration's original 1997 proposal, and S. 1052, provide up to a ten-year transition period following the

one-year implementation period, but we recommend in light of the passage of time since the original proposal—time that the CNMI has not used to improve this urgent situation—that an eight-year transition period would be more appropriate and entirely adequate.

Once the preliminary requirements of S. 1052 involving standards and findings regarding the immigration situation in the CNMI are satisfied, the INA can apply, with special modifications, in the CNMI. Under this bill, the preliminary requirements would take a minimum of 18 months, and (dependent on the findings) could lead to continued local control of immigration rather than the application of federal immigration law. If and when the INA applies, immigrant and nonimmigrant aliens generally will be visaed, inspected and admitted to the CNMI in the manner applicable in the rest of the United States. CNMI employers will be able to sponsor immigrants in the same way a mainland employer may do. The available non-immigrant categories include—among others—business visitors and tourists, intracompany transferees in managerial positions, persons of exceptional professional or artistic merit and ability, and H-2B temporary workers (especially important for construction and other industries).

The transition provisions include numerous special provisions designed to ease, during the transition period following application of the INA, any potential burden on the CNMI that might result from this change. The INS and the U.S. Department of Labor would administer a reasonable system for the annual allocation of permits to employers who wish to employ temporary alien workers who would not otherwise be eligible for admission under the INA, and for the entrance of those workers into the CNMI only. This system would ensure that CNMI employers are able to fill their positions, but with much less risk of the exploitation and mistreatment of indentured labor that is characteristic of the current CNMI immigration system.

Other provisions designed to ensure reasonable access by CNMI employers to needed labor include exemption of H-2B temporary workers coming to the CNMI from the overall numerical limitations applicable to H-2B admissions, and authority granted to the Secretary of State and the Attorney General to grant visas to, and to admit into the CNMI, a limited number of employment-based immigrants without regard to normal numerical limitations. This exception for employment-based immigrants would be triggered by a finding by the Secretary of Labor, upon receipt of a recommendation from the CNMI government, that exceptional circumstances exist with respect to the inability of CNMI employers to obtain sufficient work-authorized labor. In order to ensure the continued health of the CNMI hotel industry, this provision may be extended even beyond the end of the transition period for that industry. To prevent abuse of the CNMI immigrant exception by those who have no bona fide intention to reside

and work in the CNMI, admissions under this provision will not be valid for permanent residence and employment in the United States, other than the CNMI, for a period of five years.

S. 1052 contains other transition provisions designed to protect the CNMI from potentially adverse consequences that might occur absent such provisions. Aliens lawfully present in the CNMI under authority of CNMI law may remain in the CNMI for their period of admission, or for 2 years, whichever is less. An alien present in the CNMI under authority of CMNI law, or admitted to the CNMI under the transition program's provisions for special admission of employment-based immigrants or temporary workers, who files an application for asylum will have his or her application deemed abandoned if the alien leaves the CNMI at any time during which it is pending. Except for immediate relatives and the immigrants who may be admitted into the CNMI under the special transition period employment provisions, aliens may not be granted initial admission as a lawful permanent resident of the United States at a port-of-entry in the CNMI, or at a port-of-entry in Guam for the purpose of immigrating to the CNMI.

In short, we believe that S. 1052 in most respects is a fair bill that appropriately addresses the urgent need for immigration reform in the CNMI with the proper flexibility to ensure that the economy and society of the CNMI are not disrupted by the necessary reform. There are, however, several improvements that need to be made to the bill, in addition to adjusting the transition period from ten to eight years.

S. 1052 can be made even better

As I previously mentioned, the Department of Justice is very concerned about S. 1052's complex, multistep process for extending the INA to the CNMI. First, the Attorney General would, within 90 days after enactment of S. 1052, publish the minimum standards that she deemed necessary to ensure an effective system of immigration control for the CNMI. The determination of the minimum standards would rest within the sole discretion of the Attorney General, and would not be subject to the rulemaking requirements of the Administrative Procedure Act. The Attorney General's determination of standards would, however, be subject to review by the U.S. Court of Appeals for the D.C. Circuit upon the filing of a timely complaint by the government of the CNMI in that court, with subsequent opportunity to petition the U.S. Supreme Court for its discretionary review. The defendant in the CNMI's lawsuit presumably would be the Attorney General of the United States.

One year after the date of enactment of S. 1052, or 90 days after the resolution of litigation over the minimum standards (whichever is later), the Attorney General, after

consultation with the government of the CNMI, would make findings whether the CNMI possesses the institutional capability to administer an effective system of immigration control consistent with the minimum standards, and whether, if so, the CNMI government has demonstrated a genuine commitment to enforce such a system. Once again, the U.S. Court of Appeals for the D.C. Circuit, followed by the U.S. Supreme Court, is designated as the forum for a lawsuit by the CNMI government seeking review of the findings. Once that litigation is finally resolved, up to a ten-year transition program to full INA application would take effect 180 days after the final resolution, if the Attorney General determined that the CNMI government does not have the requisite institutional capability and genuine commitment.

The CNMI government has consistently demonstrated over a period of many years that it has neither the institutional capability nor a genuine commitment to ensure an effective system of immigration control. The INS made detailed findings of fact in the July 1997 Third Annual Report of the Federal-CNMI Initiative on Labor, Immigration & Law Enforcement supporting its conclusion that the CNMI's immigration control system is ineffective, and that conclusion is as accurate today as it was two years ago. The Department of Justice therefore believes that the provisions of S. 1052 that require first the promulgation of standards, and then a delay of at least one year before findings even can be made that could lead to extension of the INA to the CNMI, are unnecessary, and would lead to unwarranted delay and uncertainty. Congress should resolve this issue now, based on the CNMI's proven record over the last decade.

The judicial review provision within the unnecessary preliminary requirements in S. 1052 would allow the CNMI government to tie up in litigation the application of reasonable federal immigration provisions not only once, but twice, first when the Attorney General issues the minimum standards, and second, when the Attorney General issues her findings. Although S. 1052 urges expedited judicial review, the fact remains that two federal court lawsuits over the appropriate standards for CNMI immigration, with the opportunity to petition the Supreme Court for review each time, would be likely to consume several years during which no progress toward CNMI immigration reform could be made. Given the firm opposition of the CNMI government to extending the INA to the CNMI, its use litigation as a delay tactic would not be unexpected, no matter how reasonable, appropriate, and correct are the Attorney General's standards and findings.

The Department of Justice also seriously questions appropriateness of judicial review of the CNMI immigration system not just as a source of delay, but as a fundamental matter of the proper scope of the judicial function. The minimum standards for an effective immigration system

for the CNMI, and the ability and willingness of the CNMI government to implement them, are policy questions that are not susceptible to judicial determination. Absent any judicially discoverable and manageable standards for deciding them, a reviewing court would be in the position of having either to substitute its immigration policy opinions for those of the political branches of government, or simply to defer to the Attorney General's findings. In neither scenario would there be any useful purpose to such a lawsuit. Alternatively, the court could, despite S. 1052's invitation to involve itself in a dispute between the CNMI government and the United States over the appropriate immigration policy for the islands, properly dismiss the case as a nonjusticiable political question; a correct resolution, but again not a productive use of time or judicial resources.

The Administration strongly urges the Committee to remove the unnecessary and counterproductive preliminary requirements to promulgate standards and findings, including the judicial review provision that would allow the CNMI government to use litigation as a tactic to delay even further long overdue reforms, and potentially could lead to a court second-guessing and overturning national immigration policy decisions.

Our continued review of proposed legislation also has revealed several ways in which S. 1052 can be improved with minor changes. I will not take up the Committee's time with these now, but we would be glad to work with Committee staff on them, and they also will be included in the Administration's forthcoming proposal.

Recent developments in the Pacific, and prospects for successful INA enforcement in the CNMI

In his statement in the Congressional Record introducing S. 1052, Chairman Murkowski raised several questions about the INS position toward the CNMI. They are fair questions, and I want to take this opportunity to address them. The statement questioned the INS' commitment to deploy the necessary resources to the CNMI to ensure adequate enforcement and administration of the INA after S. 1052 is enacted into law. The resources available to the INS are, of course, dependent on the appropriations provided by Congress and the INS' statutory authorization to collect fees from users of certain immigration services. The INS is very appreciative of the generous support Congress has provided to its operations, particularly in the last few years, and our agency strives every day to live up to that trust.

The INS commits itself to enforce the INA adequately and fairly in the CNMI just as in any other part of the United States if that responsibility is entrusted to us, to the fullest extent of the resources available for that task. In planning for the necessary level of immigration services, we would of course be mindful of the difficult challenges posed by extending federal immigration law for the first

time to this farflung archipelago beset with immigration and labor problems.

I am not here to tell this Committee that extending the INA to the CNMI is a panacea that will instantly solve the islands' immigration problems. The best efforts of the INS to enforce the INA in the United States have not eliminated the problems of illegal immigration and alien worker exploitation we face here on the mainland, and neither is the INS likely to be able to eliminate them entirely in the CNMI. The INS officers and employees who will be charged with implementing S. 1052 will not have an easy job. However, I am confident that, with the support of Congress and the Administration, their essential task of introducing and enforcing an immigration system that is consistent with U.S. values can be successfully accomplished.

Although bringing the INA for the first time to any jurisdiction is a challenge, the CNMI offers several advantages that would facilitate INS immigration enforcement. The CNMI archipelago is farflung, but the islands are small and only three of them (Saipan, Tinian and Rota) have any substantial population. The CNMI's proximity to Guam would mean that INS operations in the two jurisdictions could complement each other, rather than the current situation in which the CNMI is a source of alien smuggling into Guam. And, although recent developments in the Pacific have shown that the CNMI's relative geographical isolation from major population centers is no barrier to maritime alien smuggling, the CNMI lacks the land borders and short maritime passages (such as the Straits of Florida, or the Mona Passage between the Dominican Republic and Puerto Rico), or the levels of international commerce, that make border control particularly difficult in other parts of the United States. I note also that S. 1052 appropriately calls for the INS and other agencies charged with INA administration in the CNMI to recruit and hire from among qualified applicants resident in the CNMI, to the extent practicable and consistent with the satisfactory performance of assigned responsibilities.

Our efforts in the CNMI would also build upon the work we have already done there. Although an INS presence in the CNMI under current legal authorities is an entirely inadequate substitute for direct application of the INA, the INS has worked with other agencies, other components of the Department of Justice, and the CNMI government to increase the federal law enforcement presence in the CNMI. Since 1996, the INS has stationed an immigration officer in the CNMI. In addition to technical assistance and liaison in the CNMI, we have provided briefings and training in Guam and Hawaii for CNMI immigration officers on basic inspection techniques, investigative procedures, and the detection of fraudulent documents. We are continuing these efforts. For example, this week we are conducting three days of additional training for CNMI immigration officers in Saipan, and one day in Rota. These

and other measures to assist the CNMI will not, however, overcome the fundamental problems of a system incompatible with American values, a local government incapable of handling this responsibility, and the lack of federal authority.

Chairman Murkowski, in his statement in the Congressional Record, also expressed concern about the INS' commitment to devote the necessary resources to immigration enforcement in the CNMI in light of the recent influx of Chinese migrants into Guam. In short, the opinion has been expressed that the Administration's response to the Guam situation, where federal immigration law already applies, has been inadequate, and that that response does not bode well for extension of federal immigration enforcement obligations to other Pacific islands where those obligations are not currently present.

I would like to respond first by noting that the sudden influx of a large number of aliens into Guam by sea was an unforeseen circumstance that required the emergency deployment of INS resources at very short notice to a place where that level of resources had not previously been needed. As the INS has no office anywhere that is over-staffed or over-budgeted compared to the demands placed upon it to provide law enforcement or immigration services, I can assure you that the officers, attorneys and other personnel and resources detailed to Guam have been very sorely missed in their regular duty stations. I am sure that that is equally true of the Department of Justice Executive Office for Immigration Review's personnel detailed to Guam, and of the Coast Guard crews manning the patrol vessels and aircraft operating in Guam waters.

Clearly, the INS needs to be prepared to deal with unexpected immigration situations wherever in the United States they occur—whether in Guam, South Florida, the Southwest Border, or (should S. 1052 become law) the CNMI—and we do our best to plan for them. That is a different situation, however, than the introduction, on a schedule that is known in advance, of INS services and enforcement to a territory of the United States not previously served. That is a situation that can be anticipated and addressed with appropriate planning and budgeting with—if sufficient lead time and resources are provided to the INS—no need to cut back immigration services in other areas of the United States in order to serve the CNMI properly. In short, the fact that the recent emergency in Guam, and the proposal to extend the INA to the CNMI, both involve nearby islands in the Pacific should not obscure the fact that they really are not comparable.

Second, I want to address any perception that the Administration's response to the Guam immigration situation has not been adequate. In response to the Guam influx, the INS worked closely with the White House, the National Security Council, the Departments of State and Defense, the Coast Guard, other components of the Depart-

ment of Justice, and Guam authorities to devise and implement an effective interdiction and repatriation strategy. That strategy included the Coast Guard's deployment of several cutters and a C-130 search and rescue airplane. On land, the INS and the Executive Office of Immigration Review deployed substantial resources in Guam, and the U.S. Attorney for Guam and the Northern Mariana Islands has pursued numerous prosecutions of smugglers responsible for the influx.

As a result, the worst appears to be over and the situation has stabilized. Much work remains to be done in Guam, however, and we must remain vigilant against new attempts to target Guam for alien smuggling. An outstanding responsibility is to provide the funding necessary for the operation, including reimbursing the government of Guam. The President has proposed \$19.4 million for this purpose. We hope the Congress provides this funding.

It also has been said that the INS' use of a facility on the island of Tinian in the CNMI to process Chinese aliens interdicted at sea near Guam is inconsistent with the Administration's support of extending the INA to the CNMI. Since May 1998, numerous boats, primarily stateless fishing vessels, attempting to reach Guam carrying Chinese nationals as cargo have either landed on that island or have been intercepted at sea by the Coast Guard. Most of the migrants were found amid deplorable conditions, overcrowded in rusting, dangerous vessels without lifeboats, sanitation facilities and sufficient food and water.

In April of this year, after available detention space on Guam was filled by the sudden influx of seaborne migrants, the U.S. Department of Defense erected a camp on former World War II airfields on Tinian, an island that is only 90 miles from Guam. Approximately 500 migrants interdicted at sea were housed temporarily in the Tinian facility, where they were processed for repatriation to China. Each alien held on Tinian was screened to determine whether the alien had a credible fear of persecution if he or she were returned home. Those aliens who established a credible fear were transported to the U.S. mainland, placed in removal proceedings, and allowed to apply for asylum. The rest of the aliens were returned to China. We used Tinian again within the last month to process a boat with about 140 Chinese national aboard.

Although it is evident from my testimony and the previous record on this matter that the Administration and the CNMI government have serious differences of opinion with respect to the CNMI's immigration system, I want to take this opportunity to inform the Committee that the CNMI government was extremely cooperative and helpful with respect to the Tinian operation. The Department of Justice thanks them for their assistance.

More tangibly, on September 7 the INS entered into a reimbursement agreement with the U.S. Department of the Interior enabling the INS to reimburse the CNMI gov-

ernment for costs, primarily personnel expenses, it incurred in support of the Tinian operation in the amount of approximately \$750,000. The INS has begun expeditious processing of the initial billings received from the CNMI, and we expect payments to begin very soon.

Mass alien smuggling by sea is a major immigration and national security threat to the United States. The phenomenon has the capability to create emergency situations that can seriously harm and disrupt American communities, particularly those as Guam that are especially vulnerable due to their small size location or limited law enforcement resources. A vigorous program of Coast Guard interdiction at sea, with diversion of the aliens to locations where they can be more expeditiously processed for repatriation than otherwise might be the case, has proven to be an effective weapon that deters this type of illegal migration. Possible interdiction sites that could provide rapid repatriation capabilities are very few and far between in the Western Pacific. In the Guam crisis, the INS was able to use the nearby island of Tinian.

The Tinian operation was a short-term, emergency response to an emergency situation. The purpose was to process for rapid repatriation to their homeland an influx of exploited migrants who arrived amid dangerous conditions. The INS sought to do this in the most expeditious and humane way available, and in a way that did not further worsen the difficult situation already existing on Guam or encourage further smuggling voyages of this type. The treatment of the migrants, including giving them an opportunity to seek protection from persecution, was completely consistent with the obligations of the United States under international law.

Important as our interdiction concerns are, however, they are substantially outweighed by the urgent need to bring a workable, fair and just immigration system to an American commonwealth that lacks one. The usefulness of having a site for repatriation is not an argument in favor of not extending federal immigration law to the CNMI, any more than it would be an argument for exempting other border areas of the United States from the INA. Of all the facts I have described, there is one overarching fact that dictates our course: The CNMI is American soil, and we must treat it as such. The Administration firmly believes that the values and interests of the United States, including the U.S. citizens of the CNMI, are best served by extending the rights, protections, and obligations the INA provides for aliens in other parts of the United States to those in the CNMI, with appropriate transition provisions.

Conclusion: S. 1052, with certain improvements, should be enacted into law

In conclusion, the Administration urges this Committee favorably to report, and the Congress promptly to enact, S. 1052 with the needed improvements. Again, we appreciate

the invitation by the Committee to offer the views of the Administration on this bill. I will be pleased to answer any questions.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill S. 1052, as ordered reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

[Public Law 94-241]

JOINT RESOLUTION To approve the "Covenant To Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America", and for other purposes

* * * * *

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America, the text of which is as follows, is hereby approved.

* * * * *

"SECTION 503. The following laws of the United States, presently inapplicable to the Trust Territory of the Pacific Islands, will not apply to the Northern Mariana Islands except in the manner and to the extent made applicable to them by the Congress by law after termination of the Trusteeship Agreement:

"(a) except as otherwise provided in Section 506, the immigration and naturalization laws of the United States;

"(b) except as otherwise provided in Subsection (b) of Section 502, the coastwise laws of the United States and any prohibition in the laws of the United States against foreign vessels landing fish or unfinished fish products in the United States; and

"(c) the minimum wage provisions of Section 6, Act of June 25, 1938, 52 Stat. 1062, as amended

* * * * *

SEC. 6. IMMIGRATION AND TRANSITION.

(a) APPLICATION OF THE IMMIGRATION AND NATIONALITY ACT AND ESTABLISHMENT OF A TRANSITION PROGRAM.—Effective on the first day of the first full month commencing one year after the date of enactment of the Northern Mariana Islands Covenant Implementation Act (hereafter the "transition program effective date"), the provisions of the Immigration and Nationality Act, as amended (8 U.S.C. 1101 et seq.) shall apply to the Commonwealth of the Northern Mariana Islands: Provided, That there shall be a transition period ending December 31, 2009 (except for subsection (d)(2)(I) following the transition program effective date, during which the Attorney General of the United States (hereafter "Attorney General"), in consultation with the United States Secretaries of State, Labor, and the Interior, shall establish, administer, and enforce a transition program

for immigration to the Commonwealth of the Northern Mariana Islands provided in subsections (b), (c), (d), (e), (f), (g) and (j) of this section (hereafter the “transition program”). The transition program shall be implemented pursuant to regulations to be promulgated as appropriate by each agency having responsibilities under the transition program.

(b) **EXEMPTION FROM NUMERICAL LIMITATIONS FOR H-2B TEMPORARY WORKERS.**—An alien, if otherwise qualified, may seek admission to the Commonwealth of the Northern Mariana Islands as a temporary worker under section 101(a)(15)(H)(ii)(B) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)(ii)(B)) without regard to the numerical limitations set forth in section 214(g) of such Act (8 U.S.C. 1184(g)).

(c) **TEMPORARY ALIEN WORKERS.**—The transition program shall conform to the following requirements with respect to temporary alien workers who would otherwise not be eligible for nonimmigrant classification under the Immigration and Nationality Act:

(1) Aliens admitted under this subsection shall be treated as nonimmigrants under section 101(a)(15) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)), including the ability to apply, if otherwise eligible, for a change of nonimmigrant classification under section 248 of such Act (8 U.S.C. 1258), or adjustment of status, if eligible therefore, under this section and section 245 of such Act (8 U.S.C. 1255).

(2)(A) The United States Secretary of the Labor shall establish, administer, and enforce a system for allocating and determining the number, terms, and conditions of permits to be issued to prospective employers for each temporary alien worker who would not otherwise be eligible for admission under the Immigration and Nationality Act. This system shall provide for a reduction in the allocation of permits for such workers on an annual basis, to zero, over a period not to extend beyond December 31, 2009 and shall take into account the number of petitions granted under subsection (j). In no event shall a permit be valid beyond the expiration of the transition period. This system may be based on any reasonable method and criteria determined by the United States Secretary of Labor to promote the maximum use of, and to prevent adverse effects on wages and working conditions of, persons authorized to work in the United States, including lawfully admissible freely associated state citizen labor, taking into consideration the objective of providing as smooth a transition as possible to the full application of federal laws.

(B) The United States Secretary of Labor is authorized to establish and collect appropriate user fees for the purpose of this section. Amounts collected pursuant to this section shall be deposited in a special fund of the Treasury. Such amounts shall be available, to the extent and in the amounts as provided in advance in, appropriations acts, for the purposes of administering this section. Such amounts are authorized to be appropriated to remain available until expended.

(3) The Attorney General shall set the conditions for admission of nonimmigrant temporary alien workers under the transition program, and the United States Secretary of State shall

authorize the issuance of nonimmigrant visas for aliens to engage in employment only as authorized in this subsection: Provided, That such visas shall not be valid for admission to the United States, as defined in section 101(a)(38) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(38)), except the Commonwealth of the Northern Mariana Islands. An alien admitted to the Commonwealth of the Northern Mariana Islands on the basis of such a nonimmigrant visa shall be permitted to engage in employment only as authorized pursuant to the transition program. No alien shall be granted nonimmigrant classification or a visa under this subsection unless the permit requirements established under paragraph (2) have been met.

(4) An alien admitted as a nonimmigrant pursuant to this subsection shall be permitted to transfer between employers in the Commonwealth of the Northern Mariana Islands during the period of such alien's authorized stay therein, without advance permission of the employee's current or prior employer, to the extent that such transfer is authorized by the Attorney General in accordance with criteria established by the Attorney General and the United States Secretary of Labor.

(d) IMMIGRANTS.—With the exception of immediate relatives (as defined in section 201(b)(2) of the Immigration and Nationality Act (8 U.S.C. 1151(b)(2)) and persons granted an immigrant visa as provided in paragraphs (1) and (2) of this subsection, no alien shall be granted initial admission as a lawful permanent resident of the United States at a port-of-entry in the Commonwealth of the Northern Mariana Islands, or at a port-of-entry in Guam for the purpose of immigrating to the Commonwealth of the Northern Mariana Islands.

(1) FAMILY-SPONSORED IMMIGRANTS VISAS.—For any fiscal year during which the transition program will be in effect, the Attorney General, after consultation with the Governor and the leadership of the Legislature of the Commonwealth of the Northern Mariana Islands, and in consultation with appropriate federal agencies, may establish a specific number of additional initial admissions as a family-sponsored immigrant at a port-of-entry in the Commonwealth of the Northern Mariana Islands, or at a port-of-entry in Guam for the purpose of immigrating to the Commonwealth of the Northern Mariana Islands, pursuant to sections 202 and 203(a) of the Immigration and Nationality Act (8 U.S.C. 1152 and 1153(a)).

(2) EMPLOYMENT-BASED IMMIGRANT VISAS.—

(A) If the Attorney General, after consultation with the United States Secretary of Labor and the Governor and the leadership of the Legislature of the Commonwealth of the Northern Mariana Islands, finds that exceptional circumstances exist with respect to the inability of employers in the Commonwealth of the Northern Mariana Islands to obtain sufficient work-authorized labor, the Attorney General may establish a specific number of employment-based immigrant visas to be made available during the following fiscal year under section 203(b) of the Immigration and Nationality Act (8 U.S.C. 1153(b)). The labor certification requirements of section 212(a)(5) of the Immigration and Na-

tionality Act, as amended (8 U.S.C. 1182(a)(5)) shall not apply to an alien seeking immigration benefits under this subsection.

(B) Upon notification by the Attorney General that a number has been established pursuant to subparagraph (A), the United States Secretary of State may allocate up to that number of visas without regard to the numerical limitations set forth in sections 202 and 203(b)(3)(B) of the Immigration and Nationality Act (8 U.S.C. 1152 and 1153(b)(3)(B)). Visa numbers allocated under this subparagraph shall be allocated first from the number of visas available under section 203(b)(3) of such Act (8 U.S.C. 1153(b)(3)), or, if such visa numbers are not available, from the number of visas available under section 203(b)(5) of such Act (8 U.S.C. 1153(b)(5)).

(C) Persons granted employment-based immigrant visas under the transition program may be admitted initially at a port-of-entry in the Commonwealth of the Northern Mariana Islands, or at a port-of-entry in Guam for the purpose of immigrating to the Commonwealth of the Northern Mariana Islands, as lawful permanent residents of the United States. Persons who would otherwise be eligible for lawful permanent residence under the transition program, and who would otherwise be eligible for an adjustment of status, may have their status adjusted within the Commonwealth of the Northern Mariana Islands to that of an alien lawfully admitted for permanent residence.

(D) Any immigrant visa issued pursuant to this paragraph shall be valid only for application for initial admission to the Commonwealth of the Northern Mariana Islands. The admission of any alien pursuant to such an immigrant visa shall be an admission for lawful permanent residence and employment only in the Commonwealth of the Northern Mariana Islands during the first five years after such admission. Such admission shall not authorize residence or employment in any other part of the United States during such five-year period. An alien admitted for permanent residence pursuant to this paragraph shall be issued appropriate documentation identifying the person as having been admitted pursuant to the terms and conditions of this transition program, and shall be required to comply with a system for the registration and reporting of aliens admitted for permanent residence under the transition program, to be established by the Attorney General, by regulation, consistent with the Attorney General's authority under Chapter 7 of Title II of the Immigration and Nationality Act (8 U.S.C. 1301–1306).

(E) Nothing in this paragraph shall preclude an alien who has obtained lawful permanent resident status pursuant to this paragraph from applying, if otherwise eligible, under this section and under the Immigration and Nationality Act for an immigrant visa or admission as a lawful permanent resident under the Immigration and Nationality Act.

(F) Any alien admitted under this subsection, who violates the provisions of this paragraph, or who is found removable or inadmissible under section 237(a) (8 U.S.C. 1227(a)), or paragraphs (1), (2), (3), (4)(A), (4)(B), (6), (7), (8), (9) or (10) of section 212(a) (8 U.S.C. 1182(a)), shall be removed from the United States pursuant to sections 235, 238, 239, 240, or 241 of the Immigration and Nationality Act, as appropriate (8 U.S.C. 1225, 1228, 1229, 1230, and 1231).

(G) The Attorney General may establish by regulation a procedure by which an alien who has obtained lawful permanent resident status pursuant to this paragraph may apply for a waiver of the limiting terms and conditions of such status. The Attorney General may grant the application for waiver, in the discretion of the Attorney General, if—

- (i) the alien is not in removal proceedings;
- (ii) the alien has been a person of good moral character for the preceding five years;
- (iii) the alien has not violated the terms and conditions of the alien's permanent resident status; and
- (iv) the alien would suffer exceptional and extremely unusual hardship were such limiting terms and conditions not waived.

(H) The limiting terms and conditions of an alien's permanent residence set forth in this paragraph shall expire at the end of five years after the alien's admission to the Commonwealth of the Northern Mariana Islands as a permanent resident. Following the expiration of such limiting terms and conditions, the permanent resident alien may engage in any lawful activity, including employment, anywhere in the United States. Such an alien, if otherwise eligible for naturalization, may count the five-year period in the Commonwealth of the Northern Mariana Islands towards time in the United States for purposes of meeting the residence requirements of Title III of the Immigration and Nationality Act.

(I) SPECIAL PROVISION TO ENSURE ADEQUATE EMPLOYMENT IN THE TOURISM INDUSTRY AFTER THE TRANSITION PERIOD ENDS.—

- (i) During 2008, and in 2014 if a five year extension was granted, the Attorney General and the United States Secretary of Labor shall consult with the Governor of the Commonwealth of the Northern Mariana Islands and tourism businesses in the Commonwealth of the Northern Mariana Islands to ascertain the current and future labor needs of the tourism industry in the Commonwealth of the Northern Mariana Islands, and to determine whether a 5-year extension of the provisions of this paragraph (d)(2) would be necessary to ensure an adequate number of workers for legitimate businesses in the tourism industry. For the purpose of this section, a business shall not be considered legitimate if it engages directly or indirectly in prostitution

or any activity that is illegal under federal or local law. The determination of whether a business is legitimate and whether it is sufficiently related to the tourism industry shall be made by the Attorney General in his sole discretion and shall not be reviewable. If the Attorney General after consultation with the United States Secretary of Labor determines, in the Attorney General's sole and unreviewable discretion, that such an extension is necessary to ensure an adequate number of workers for legitimate businesses in the tourism industry, the Attorney General shall provide notice by publication in the Federal Register that the provisions of this paragraph will be extended for a 5-year period with respect to the tourism industry only. the Attorney General may authorize one further extension of this paragraph with respect to the tourism industry in the Commonwealth of the Northern Mariana Islands if, after the Attorney General consults with the United States Secretary of Labor and the Governor of the Commonwealth of the Northern Mariana Islands, and local tourism businesses, the Attorney General determines, in the Attorney General's sole discretion, that a further extension is required to ensure an adequate number of workers for legitimate businesses in the tourism industry in the Commonwealth of the Northern Mariana Islands. The determination as to whether a further extension is required shall not be reviewable.

(ii) The Attorney General, after consultation with the Governor of the Commonwealth of the North Mariana Islands and the United States Secretary of Labor and the United States Secretary of Commerce, may extend the provisions of this paragraph (d)(2) to legitimate businesses in industries outside the tourism industry for a single 5 year period if the Attorney General, in the Attorney General's sole discretion, concludes that such extension is necessary to ensure an adequate number of workers in that industry and that the industry is important to growth or diversification of the local economy. The decision by the Attorney General shall not be reviewable.

(iii) in making his determination for the tourism industry or for industries outside the tourism industry, the Attorney General shall take into consideration the extent to which a training and recruitment program has been implemented to hire persons authorized to work in the United States, including lawfully admissible freely associated state citizen labor to work in such industry. The determination by the Attorney General shall not be reviewable. No additional extension beyond the initial 5 year period may be granted, for any industry outside the tourism industry or for the tourism industry beyond a second extension. If an extension is granted, the Attorney General shall submit a report to the Committee on Energy and Natural Re-

sources of the Senate and the Committee on Resources of the House of Representatives setting forth the reasons for the extension and whether he believes authority for additional extensions shall be enacted.

(e) NONIMMIGRANT INVESTOR VISAS.—

(1) Notwithstanding the treaty requirements in section 101(a)(15)(E) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(E)), the Attorney General may, upon the application of the alien, classify an alien as a nonimmigrant under section 101(a)(15)(E)(ii) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(E)(ii) if the alien—

(A) has been admitted to the Commonwealth of the Northern Mariana Islands in long-term investor status under the immigration laws of the Commonwealth of the Northern Mariana Islands before the transition program effective date;

(B) has continuously maintained residence in the Commonwealth of the Northern Mariana Islands under long-term investor status;

(C) is otherwise admissible; and

(D) maintains the investment or investments that formed the basis for such long-term investor status.

(2) Within 180 days after the transition program effective date, the Attorney General and the United States Secretary of State shall jointly publish regulations in the Federal Register to implement this subsection.

(3) The Attorney general shall treat an alien who meets the requirements of paragraph (1) as a nonimmigrant under section (101(a)(15)(E)(ii)) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(E)(ii) until the regulations implementing this subsection are published.

(f) PERSONS LAWFULLY ADMITTED UNDER THE COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS IMMIGRATION LAW.—

(1) No alien who is lawfully present in the Commonwealth of the Northern Mariana Islands pursuant to the Immigration laws of the Commonwealth of the Northern Mariana Islands on the transition program effective date shall be removed from the United States on the ground that such alien's presence in the Commonwealth of the Northern Mariana Islands is in violation of subparagraph 212(a)(6)(A) of the Immigration and Nationality Act, as amended, until completion of the period of the alien's admission under the immigration laws of the Commonwealth of the Northern Mariana Islands, or the second anniversary of the transition program effective date, whichever comes first. Nothing in this subsection shall be construed to prevent or limit the removal under subparagraph 212(a)(6)(A) of such an alien at any time, if the alien entered the Commonwealth of the Northern Mariana Islands after the date of enactment of the Northern Mariana Islands Covenant Implementation Act, and the Attorney General has determined that the Government of the Commonwealth of the Northern Mariana Islands violated subsection (f) of such Act.

(2) Any alien who is lawfully present and authorized to be employed in the Commonwealth of the Northern Mariana Is-

lands pursuant to the immigration laws of the Commonwealth of the Northern Mariana Islands on the transition program effective date shall be considered authorized by the Attorney General to be employed in the Commonwealth of the Northern Mariana Islands until the expiration of the alien's employment authorization under the immigration laws of the Commonwealth of the Northern Mariana Islands, or the second anniversary of the transition program effective date, whichever comes first.

(g) *TRAVEL RESTRICTIONS FOR CERTAIN APPLICANTS FOR ASYLUM.—Any alien admitted to the Commonwealth of the Northern Mariana Islands pursuant to the immigration laws of the Commonwealth of the Northern Mariana Islands or pursuant to subsections (c) or (d) of this section who files an application seeking asylum or withholding of removal in the United States shall be required to remain in the Commonwealth of the Northern Mariana Islands during the period of time the application is being adjudicated or during any appeals filed subsequent to such adjudication. An applicant for asylum or withholding of removal who, during the time his application is being adjudicated or during any appeals filed subsequent to such adjudication, leaves the Commonwealth of the Northern Mariana Islands of his own will without prior authorization by the Attorney General thereby abandons the application, unless the Attorney General, in the exercise of the Attorney General's sole discretion determines that the unauthorized departure was for emergency reasons and prior authorization was not practicable.*

(h) *EFFECT ON OTHER LAWS.—The provisions of this section and the Immigration and Nationality Act, as amended by the Northern Mariana Islands Covenant Implementation Act, shall, on the transition program effective date, supersede and replace all laws, provisions, or programs of the Commonwealth of the Northern Mariana Islands relating to the admission of aliens and the removal of aliens from the Commonwealth of the Northern Mariana Islands.*

(i) *ACCRUAL OF TIME FOR PURPOSES OF SECTION 212(a)(9)(B) OF THE IMMIGRATION AND NATIONALITY ACT, AS AMENDED.—No time that an alien is present in violation of the immigration laws of the Commonwealth of the Northern Mariana Islands shall by reason of such violation be counted for purposes of the ground of inadmissibility in section 212(a)(9)(B) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(9)(B)).*

(j) *ONE-TIME GRANDFATHER PROVISION FOR CERTAIN LONG-TERM EMPLOYEES.—*

(1) An alien may be granted an immigration visa, or have his or her status adjusted in the Commonwealth of the Northern Mariana Islands to that of an alien lawfully admitted for permanent residence, without regard to the numerical limitations set forth in sections 202 and 203(b) of the Immigration and Nationality Act, as amended (8 U.S.C. 1152, 1153(b)) and subject to the limiting terms and conditions of an alien's permanent residence set forth in paragraphs (C) through (H) of subsection (d)(2), if:

(A) the alien is employed directly by an employer in a business that the Attorney General has determined is legitimate;

(B) *the employer has filed a petition for classification of the alien as an employment-based immigrant with the Attorney General pursuant to section 204 of the Immigration and Nationality Act, as amended, not later than 180 days following the transition program effective date;*

(C) *the alien has been lawfully present in the Commonwealth of the Northern Mariana Islands and authorized to be employed in the Commonwealth of the Northern Mariana Islands for the five-year period immediately preceding the filing of the petition;*

(D) *the alien has been employed continuously in that business by the petitioning employer for the 5-year period immediately preceding the filing of the petition;*

(E) *the alien continues to be employed in that business by the petitioning employer at the time the immigrant visa is granted or the alien's status is adjusted to permanent resident;*

(F) *the petitioner's business has a reasonable expectation of generating sufficient revenue to continue to employ the alien in that business for the succeeding five years, and*

(G) *the alien is otherwise eligible for admission to the United States under the provisions of the Immigration and Nationality Act, as amended (8 U.S.C. 1101, et seq.).*

(2) *Visa numbers allocated under this subsection shall be allocated first from the number of visas available under paragraph 203(b)(3) of the Immigration and Nationality Act, as amended (8 U.S.C. 1153(b)(3)), or, if such visa numbers are not available, from the number of visas available under paragraph 203(b)(5) of such Act (8 U.S.C. 1153(b)(5)).*

(3) *The labor certification requirements of section 212 (a)(5) of the Immigration and Nationality Act, as amended (8 U.S.C. 1182(a)(5)) shall not apply to an alien seeking immigration benefits under this subsection.*

(4) *The fact that an alien is the beneficiary of an application for a preference status that was filed with the Attorney General under section 204 of the Immigration and Nationality Act, as amended (8 U.S.C. 1154) for the purpose of obtaining benefits under this subsection, or has otherwise sought permanent residence pursuant to this subsection, shall not render the alien ineligible to obtain or maintain the status of a nonimmigrant under this Act or the Immigration and Nationality Act, as amended, if the alien is otherwise eligible for such non-immigrant status.*

[Public Law 414—June 27, 1952]

AN ACT To revise the laws relating to immigration, naturalization, and nationality; and for other purposes.

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SEC. 101. (a) * * *

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(36) The term "State" includes the District of Columbia, Puerto Rico, Guam, [and the Virgin Islands of the United States.] *the Vir-*

gin Islands of the United States, and the Commonwealth of the Northern Mariana Islands.

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(38) The term “United States”, except as otherwise specifically herein provided, when used in a geographical sense, means the continental United States, Alaska, Hawaii, Puerto Rico, Guam, **and the Virgin Islands of the United States.** *the Virgin Islands of the United States, and the Commonwealth of the Northern Mariana Islands.*

* * * * *

(1) GUAM; WAIVER OF REQUIREMENTS FOR NONIMMIGRANT VISITORS; CONDITIONS OF WAIVER; ACCEPTANCE OF FUNDS FROM GUAM.—

(1) The requirement of paragraph (7)(B)(i) of subsection (a) of this section may be waived by the Attorney General, the Secretary of State, and the Secretary of the Interior, acting jointly, in the case of an alien applying for admission as a non-immigrant visitor for business or pleasure and solely for entry into and **stay on Guam** *stay on Guam and the Commonwealth of the Northern Mariana Islands* for a period not to exceed a *total* of fifteen days, if the Attorney General, the Secretary of the State and the Secretary of the Interior, **after consultation with the Governor of Guam,** *after respective consultation with the Governor of Guam or the Governor of the Commonwealth of the Northern Mariana Islands*, jointly determine that—

(A) an adequate arrival and departure control system has been developed **on Guam,** *on Guam or the Commonwealth of the Northern Mariana Islands, respectively*, and

(B) such as waiver does not represent a threat to the welfare, safety, or security of the United States or its territories and commonwealths.

(2) an alien may not be provided a waiver under this subsection unless the alien has waived any right—

(A) to review or appeal under this Act of an immigration officer’s determination as to the admissibility of the alien at the port of entry **into Guam,** *into Guam or the Commonwealth of the Northern Mariana Islands, respectively*, or

(B) to contest, other than on the basis of an application for asylum, any action for removal of the alien.

(3) If adequate appropriated funds to carry out this subsection are not otherwise available, the Attorney General is authorized to accept from the **Government of Guam** *Government of Guam or the Government of the Commonwealth of the Northern Mariana Islands* such funds as may be tendered to cover all or any part of the cost of administration and enforcement of this subsection.